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CHAS. HEBERT,
EDITOR, 34 ST.
VINCENT STREET
MONTREAL.

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Montreal,
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Papineau

THE
DELPIT CASE

AN ESSAY ON MARRIAGE

BY

A LAYMAN

I

On May 2nd, 1893, Mr. Edouard Delpit, aged twenty-three years, married at Montreal Miss Marie Berthe Aurore Jeanne Côté, whose age was sixteen years and two months.

Although the married pair had been vowed at the time of their birth to the catholic faith by their parents, who were also born members of the Roman Church, yet they had given up the practices of religion ; and if they could have removed from their brows the indelible trace of baptism, they would eagerly have done so. But not being able to wipe out a material fact brought into existence in the past, they had to remain catholics, at least in name. They resigned themselves to their lot in this respect. When, however, an opportunity presented itself

of openly showing their contempt for the catholic religion they availed themselves of it by having their union blessed by a Protestant Unitarian clergyman, the Rev. Mr. Barnes.

Theirs was not a happy marriage.

Through causes very hard to appreciate by the public, discord crept into their household. We would have contented ourselves with this simple statement if Mr. and Mrs. Delpit had not both published recently in the newspapers the grievances each had, in reality or otherwise, against the other. It was Mr. Delpit who first adopted this regrettable course. His lengthy letter may be summed up thus: his wife had an unbearable disposition; she was a bad wife and a bad mother.

In her reply Mrs. Delpit maintained, with an appearance of truth, that her husband was tyrannical and brutal.

Both of them, however, agreed upon one point: that it was absolutely impossible for them to continue to live together.

In the bitter feeling, however, which each displayed towards the other there was nothing to justify the faintest suspicion that either of them had been unfaithful to the marriage vow; and the only reasonable conclusion at which anyone who paid close attention to this affair could arrive is that there was deep-rooted incompatibility of temper, character, and education on both sides.

We have no hesitation in admitting that, in these circumstances, the matrimonial state may be a crushing load from which relief can be obtained by the only means which the law places within the reach of an unhappy married couple: judicial separation.

To this legal means Mrs. Delpit had recourse.

In order to regain her freedom she began a lawsuit against her husband with a view to securing a separation from him. Her action was founded on the con-

tentions which she details in the document reproduced further on (see appendix No. 1).

Just as she placed her petition before the civil courts her husband, Mr. Edouard Delpit, adopted another course. He laid his case before the ecclesiastical authorities of Quebec, contending that a marriage between two catholics who had not formally abjured their creed was clandestine when it was solemnized by a protestant clergyman. On this ground he asked the religious tribunal to declare his marriage null and void.

He won his case, and, by a judgment given through the Ordinary of Quebec, dated July 12th, 1900,—a judgment ratified at Rome by a decree of the Propaganda on November 23rd of the same year—the marriage of Mr. Edouard Delpit and Miss Marie Berthe Aurore Jeanne Côté was declared null and invalid by reason of clandestinity. (1)

It would be as improper as it would be useless to protest against a judgment definitely confirmed by a superior tribunal far removed from the local influences that might influence the decision of the judges before whom the case was first placed, and who, being acquainted with the husband or wife, or his or her relatives, might be unconsciously prejudiced one way or the other.

With its supreme authority the Roman Catholic Church, then, has pronounced a sentence in accordance with its traditions and its idea of justice. Nobody can deny that its action was quite within its right, and that its judgment is perfectly logical. In its view the marriage of Mr. Delpit and Miss Côté never existed, since the Catholic

¹ Before going further, and discussing the civilly legal side of this ecclesiastical decision we advise our readers to make themselves acquainted with all the details set forth in this case.

Church regards matrimony as a sacrament. It follows that every conjugal union between those who are members of the Catholic Church by baptism is but a concubinage if such union is not effected and blessed by her.

Moreover, there are numerous precedents for such a decision on her part, and it is always permissible to those concerned to have their abnormal condition religiously legalized in the eyes of the Catholic Church by having the marriage ceremony performed by one of her priests.

What has surprised all persons who have taken any interest in the Delpit case is that Mrs. Delpit did not herself ask the intervention of the Catholic Church, instead of opposing its authority. Taking this circumstance into consideration those excellent people who have never experienced the troubles and sorrows of life look upon unhappy Mrs. Delpit as the victim of a cruel fate; and few persons ask themselves if really the sentence pronounced by the ecclesiastical tribunal could have been other than it has been.

In some quarters this singular opinion has been unhesitatingly expressed:

Why, if the marriage of Mr. and Mrs. Delpit was virtually null, did not the Church, instead of declaring it to be null, put the pseudo-married couple under the obligation of conforming to its regulations?

Such a sentimental process of reasoning has been adopted by candid people of irreproachable character. Only, they forget that neither under the rules of the Church nor under those of the civil power may the matrimonial tie be broken with impunity, and that the mutual and free consent of a man and woman who desire to enter upon the married state is, according to both divine and human laws, imperatively necessary in order to legalize their union before mankind and before God.

It was not an advice that Mr. Delpit sought from the ecclesiastical authorities; it was a sentence.

They could not decline to accede to his request.

A judge may try to reconcile the suitors who appear before him, but he cannot force conciliation upon them.

We cannot, therefore, understand why this judgment of the Roman Church should have given rise to the many bitter comments which have been written and spoken upon it. It was of a purely disciplinary, religious, and moral order. The Church does not impose its regulations upon people who do not acknowledge its authority; and in our time it does not attempt to use any other means in dealing with the masses but that of persuasion. Its decision, therefore, in the case which we are discussing, applies only to matrimony in its divine nature, and not in its material and civil aspects.

This is so clear that the party who benefits by the ecclesiastical judgment must apply to the ordinary tribunals to decide whether a marriage contracted by two catholics, even though they are not practical ones, before a protestant clergyman has the same civil effects as a marriage contracted before a clergyman professing the same creed as that to which the bridegroom and bride officially belong. In other words, what we want to know, once for all, is whether an officiating functionary of whatever kind can legally perform a marriage or similarly solemn ceremony affecting permanently the persons concerned, no matter what may be the religion of those who ask him to perform it?

This is, in reality, the crucial point in the problem presented by the Delpit case.

The wife's position is doubtless interesting; that of the children too, and, no matter what may be said, so is that of the husband. But since there are petty tyrannies in life, there must, unfortunately, be victims to them, and

all the tenderness of kindly hearts cannot bring happiness into a household where anger and hatred have replaced love.

What is all the sadder in the Delpit case is the fact that the unhappiness of both husband and wife is not due to any misbehavior that would properly have the effect of withholding from either of them the compassion or sympathy of right-thinking people for the guilty one, but to an ineradicable misunderstanding arising from difference in disposition, aims, and training, and particularly to an unforeseen change in the social position of the husband, who had taken his wife into surroundings for the demands of which her early education had not fitted her.

Anyhow, it is to these circumstances that we trace, after a study necessarily incomplete, the dissensions in the Delpit household.

We are, perhaps, mistaken; but this does not matter much, for it is not for the purpose of laying bare to the public gaze the privacy of a discordant household that we have written this book, but rather with the object of drawing from it a useful lesson and of helping to bring about a change in our laws if they are so faultily framed at present as to allow cunningness to entrap and deceive the credulous.

II

If we undertake to point out the badness, the vagueness, and the imperfections of our marriage laws, especially those relating to the validity of matrimonial ceremonies, we must, first of all, define the nature of this act, and glance cursorily at its development through different civilizations and ages, and deduce therefrom its grave public importance.

Such is the object we are about to try to attain.

Marriage should be thus defined :

The association of a man and a woman who unite to perpetuate their kind, to help each other, by mutual services, to bear the burden of life, and to share a common destiny in sorrow as in joy.

This important institution, considered in the light of present-day civilization, may be viewed under very different aspects. Thus, the continued existence of human kind, the gratification of its desires both tender and strong, moral affinity, the union of individual interests, are some of the aims of wedlock, which manifest themselves in that state in various ways, according to circumstances, localities, and times.

"Philosophers," says Portalis, "see chiefly in marriage the union of two sexes : juriconsults regard it as a civil contract ; priests look upon it only as a sacrament ; and economists study it from the point of view of the more or less active propagation of individuals."

Marriage is as old as the world—natural marriage, of course ; for, in the plain and simple words of Genesis, God said to the first man and woman : "Increase and multiply, and

From the days of Adam and Eve the patriarchs and their offspring entered upon the married state by observing nature's law ; when, likewise, Moses had draw up the Jewish laws, matrimony was still a plain ceremony at which the father acted as pontiff and represented the Divine Author of creation. Placing the right hands of the betrothed in each other, he said : "Blessed be both of you : be virtuous in your conduct ; and may the God of Abraham be with you !"

In preserving in marriage its natural features, however, Moses and the most ancient law-givers deemed it their duty to forbid certain persons to contract it, such

as blood relatives in the first and even in the second degree; but they did not forbid divorce, which was a custom, and which is still a custom, notwithstanding the rules of catholicism to the contrary.

Civilization has been powerfully influenced by the two distinct forms which have always characterized marriage. One is monogamy, which is, in our opinion, the perfect sort of marriage, and which puts the man and the woman on a plane of equality so far as the differences between their moral and physical nature will permit; the other is polygamy, (1) which was the almost general law in ancient times, which half of the world follow to this day, and which has no other result but to place the union and enjoyment of the sexes at the disposal of the few.

"The Romans, of all peoples," says Tenlet, "have been the most scrupulous observers of the rule which permits only one man to marry one woman. The contrary rule, it has been proved, has been the result of climatic influences; for the oldest monuments of history show us that polygamy was always practised in Asia and in Africa, while it was forbidden as a crime amongst the Greeks and Romans."

In Athens as well as in Rome there were exceptions to the general rule of monogamy, but as they were short-lived and did not find favor amongst the masses, it is only for the purpose of mentioning the fact that we make brief allusion to it.

These instances of the antiquity of marriage, or rather of the constitution of the family, do not, however, justify the conclusion that it was a primitive institution. Notwithstanding the practice of monogamy by wolves

(1) Monogamy is the union of one man with one woman; polygamy is the union of one man with several women, at the same time, or of one woman with several men. In the latter practice—the union of one woman with several men simultaneously—is called polyandry.

and foxes and storks, the family, as we now know it, was, it has been irrefutably proved, a later outcome of civilization, and could only exist as an established institution in a state already founded.

In the vast majority of cases human societies began by the most revolting promiscuousness. Then the care of the children commenced to exercise a salutary influence, and as the race continued to make progress the notion of parentage and blood-relationship developed in the minds of the women. As Brid'oison says, if one is always somebody's child, there can be no doubt regarding the mother, for in those far-off times it was she alone who could be recognized.

In this way the "reign" or "right" of the mother, as it is termed, was called into being; and a second period was entered upon.

That age of the recognition of parentage by women was, in fact, the first stage in the evolution of man from the savage state. It was a very long age; and it would seem that between it and the period of the recognition of parentage by men polyandry played an important, perhaps a necessary part. This is the third and last period, in which the family is established on the right and authority of the father.

But in addition to this pivotal fact of parentage by women, there is another that is hardly less important; and that is what is known as marriage by capture, which is still practised, we are told, by some savage peoples, and of which the tradition is handed down amongst many others. In his book on this subject the learned Dr. Regnard says:

"In Australia, when a man wants a wife he wanders around the encampment of a tribe other than his own; and the moment he sees a girl walking alone, he rushes towards her, knocks her into insensibility with a brutal

blow on the head, and drags her into a secluded place, where he awaits the return of his newly-found spouse to consciousness. When she again opens her eyes she gladly submits to the consummation of this rather violent sort of gallantry, and yields herself up to her conqueror — a conqueror in the full sense of the term — and thus a marriage takes place."

Amongst the Konds, in India, in Brazil, in Chili, amongst the Kaffirs, the Tanguos, the Kalmucks, etc., the doctor adds, ceremonies are gone through at the time of the marriage in which the future husband indulges in nameless brutalities.

The story of the Rape of the Sabines had its origin, most likely, in the remnants of a system of "marriage by capture" amongst the Romans.

To our view, these various forms of marriage were, as a matter of fact, constituted nothing more or less than concubinage in the strictly etymological meaning of the term. Indeed, concubinage can be traced back to the earliest human communities or societies. It was the precursor of marriage. Gradually there arose differences in the position of women who formed part of the household, owing to the deplorable effects of slavery; and these caused the distinction between wives and concubines. The wives, who had been in a free or emancipated condition, had rights. They occupied the position of companions to the head of the household, and their children were legitimate, in the sense that they could succeed their father. The concubines, who were simply slaves, were only servants or human chattels belonging totally to their master, who did as he pleased with them. Their children were illegitimate; they could not inherit from their father; they had no rights at all.

These distinctions between wives and concubines and their respective children had something of the sanction

of law in the days of Abraham. Ishmael was the illegitimate son of the patriarch borne by his concubine Hagar. When Sarah unexpectedly ceased to be barren the lot of Hagar and her son Ishmael was entirely changed, and they were heartlessly driven forth into the wilderness with but a loaf of bread and a jug of water for their subsistence.

We see almost a counterpart of the position of the concubine amongst the Romans, who accorded a superior civil condition to their children, called "state children", over the offspring of an illicit or temporary intercourse. The Franks, however, while they established a distinction between wives and concubines, made none whatever between their children. Thierry the First, the son of a concubine, shared the inheritance of his father Clovis on an equal footing with Clotaire, Clodomir, and Sigebert, who were the children of the wife.

It may be pointed out here that in ancient times concubinage, owing to the social customs and conditions in which it first sprang into existence, possessed a very important feature. Whatever might otherwise be her condition, the woman was looked upon as an inferior being. The delicacy which is part of her very nature obtained scant respect. The degraded position accorded her may well be illustrated by the fact that in the Middle Ages the most enlightened of the Church's representatives discussed seriously the question whether God had given her a soul. The two worst wrongs from which woman suffered were thus inflicted. Regarded as a slave or servant, her modesty was but the sport of man; and besides, she became in his eyes a mere instrument of pleasure, to be taken or cast off at his will.

Briseis, the daughter of the priest Chryses, was amongst the prisoners taken by the Greeks in the neighborhood of Troy. She pleased the lustful eyes of Agamemnon, who

took personal possession of her. When her father offered a ransom for her freedom, Agamemnon replied : " Old man, let me not see you here : your daughter belongs to me ; she will follow me ; she will share my bed ; and I will only give her back to you when she has lost her youthfulness."

If the woman was free, and, therefore, a wife, she was obliged to dwell in the same house as the concubine, exercising some authority over her, it may be, but forced to humiliate herself in the presence of youth, beauty, and gracefulness, delighted when she received from the husband attentions denied to her rival. Agamemnon's legitimate wife was Clytemnestra. " I shall take Briseis to Argos," he said, " where she shall dwell in my palace ; for I like her better than Clytemnestra, to whom she is superior in body and mind."

Agamemnon's morality was that of all the early ages of historic man. Briseis is sacrificed to man's lust ; Clytemnestra broods in silence over the shame of the contempt in which she is held.

It can be readily understood that, in such social conditions, concubinage was quite natural amongst the ancients and in the Middle Ages, slavery enabling the wealthy man to buy as many women as he could afford.

There were other distinguished libertines whose names might be mentioned, such as Solomon, who, according to Holy Writ had a thousand "strangers" ; Priam, who populated Troas with his bastards ; Xerxes, who in his renowned war against the Greeks, ordered three hundred and sixty-five concubines to be placed in his train ; Commodos, who had three hundred ; Heliogabalos, who turned his senate into a harem. These are revolting exceptions ; but it is clearly proved that concubinage, in divers forms, depending on the individual taste, disposition, and means of men, was for centuries the crying

evil of mankind in general. The Frank Kings, even Charlemagne himself, had concubines. Yet Charlemagne was canonized !

It was owing to this toleration that the Church was able, later on, to effect amongst her own ecclesiastical representatives, the greatest and most difficult of reforms—the celibacy of her priests.

When, later on, the period of servitude, which was really slavery in all but name, no longer, on account of the powerful influence of modern ideas, continued to exist, with its cruel wrongs perpetrated through man's unbridled passion, the Church led a moral crusade ; and the Council of Trente (1545) laid down rigid regulations relative to christian marriage.

After that concubinage, if it was not altogether suppressed amongst Christians, ceased to be indulged in openly ; and when it was practised it was with the free consent of the woman, just as is the case at the present day in civilized communities. This species of concubinage has become alarmingly widespread in modern times ; and it cannot reasonably be hoped to see it checked or stopped until regulations and laws concerning marriage to an extent which it is not our intention to discuss here.

Marriage, according to jurisprudence, is a contract entered into by virtue of the " law of peoples ". Since it is recognized and legalized by civil society the laws respecting it must be observed by those who wish to become licitly united. In former times the permanency which our present laws decree as to its binding character did not exist ; by a contract entered into by mutual desire and consent,—a contract with which the State did not necessarily have anything to do—husband and wife were

united ; they did not require other witnesses than there parents, relatives, for friends, although sometimes they liked to secure wide publicity to an event so important to both of them. Such a marriage was none the less a lawful union of man and woman. Our remote ancestors called it a "natural marriage", and held it in the highest esteem, mistaking it for a legitimate marriage. For this reason the Catholic Church makes a precise distinction, in this connection, for those who acknowledge her laws as possessing supreme authority. She stamped out the custom of natural as well as of civil marriage by elevating the union of man and woman to the position of a sacrament, and by commanding that no marriage not blessed by God through being celebrated by one of her priests. This decree was obeyed by catholic nations for a long time ; but now a change has come over them in this respect, and in many countries the religious ceremony is not regarded as necessary, being simply a sort of blessing upon the wedded pair. It is noteworthy that in France the law recognizes civil marriage alone as legally valid, and the mayor of every village or ward, or his assistant, is the only official in whom is vested the authority to perform the marriage ceremony, and to issue a certificate of its performance, before four witnesses, whether parents and relatives or not of the bride and bridegroom. There is no necessity for the married couple to go through any religious ceremony in connection with their union, as this would in no way increase the validity of the civil contract.

We readily admit, however, that those who refrain from having a religious ceremony performed after the civil function has taken place are in a small minority, because even people who no longer profess the catholic faith consider it to be the correct thing to do in the eyes of their neighbors.

The force of habit is the cause of this. Amongst the working classes, both ceremonies are performed the same day, the newly married couple proceeding at once from the mayor's office to the church, accompanied by their witnesses; and they do not feel themselves really married until they have obtained the sacrament of matrimony. It is customary for those who belong to the upper classes, or to the nobility, to wait a few days before securing the nuptial benediction at the hands of an official representative of the Church; and while the civil ceremony is gone through in a perfunctory way, the sacramental marriage is marked by all the accompaniments of a solemn festival, attended by a crowd of relatives, friends and acquaintances, with an abundance of flowers and with special music.

So indispensable, in fact, is the religious ceremony regarded that the bride and bridegroom do not cohabit until it has taken place.

Marriage, then, it is evident from the foregoing considerations, partakes of a dual character, as we regard it in our own times: it is a sacramental act, and it is a civil contract. That it ought to be invested with this dual character few sensible men will deny. With us the stipulative or civil act is held in disesteem. The catholic priest administers the sacrament, the protestant clergyman blesses the union; but neither of them, nobody at all, indeed, takes the pains to find out whether some fact affecting the man or the woman, which would vitiate the marriage, does or does not exist. Admitting the rarity of cases like those of Delpit, Lachapelle, and others, where the question of validity has arisen, it may be said, without fear of contradiction, that if certain tests were applied to the assertions of the couples seeking to be married, there would be still fewer instances of conjugal in-

felicity brought to the public gaze, or existent in the privacy of the household.

We have stated that in France civil marriage alone is valid before the law. There is one point, however, to which attention should also be directed. In that country, the religious ceremony may not take place before the civil one; and every clergyman, to whatever creed he may belong, is forbidden to perform the ceremony of marriage before he is shown the duly-attested official certificate of civil contract. Infraction of this part of the law is visited with a fine of from 16 to 100 francs (\$3.20 to \$20.00) for the first offence, but if the offending clergyman has already been convicted he is very severely punished, being sent to jail for a period of from two to five years, and liable to detention afterwards.

We are not unmindful of the fact that the marriage law in France would, if an attempt were made to copy it here, arouse considerable indignation from two points of view: the obligatory subordination of the catholic clergy to the civil law, and the severity of the punishment with which infractions of it are visited. It may be comforting for many sensitive readers of this work to be told that we have not been able to find any record in a case in which the rigor of the law has been applied, so that it is not so exacting or cruel after all. Besides, every law that does not contain a penalty clause is null and void: and it would, therefore, seem that those who inveigh against the French marriage law, are actuated by enmity towards the State. In France, as elsewhere, and as here, clergymen of all denominations are subject to the laws of the land like other citizens; and we deem it but right to say that they are the most law-abiding persons in the community.

But the tying of the nuptial knot by a civil official does not prevent its being annulled afterwards. The certificate, drawn up in legal form, is a proof that the law has been complied with, and protects the marriage from future attacks. This document contains :

1. The surnames, names, professions, ages, places of birth, and residences of the contracting parties ;
2. A statement as to whether either of the parties is under or over the age of majority ;
3. The surnames, names, professions, and residences of the parents ;
4. The consent of the parents, grandfathers and grandmothers, and that of the members of the family, if this is requested ;
5. The " *actes respectueux* ", if there are any ; (1)
6. The publication of the bans in the different places of residence ; (2).
7. The declaration of the couple to espouse each other and the pronouncement of their union by the civil official ;
8. Lastly, the surnames, names, ages, professions and residences of the witnesses, and their declarations that they are the parents or relatives of the marrying pair.

This certificate of civil marriage in France is not issued before certificates of the birth of the two betrothed, and of the death, as the case may be, of parents and grand-

(1) In France, *actes respectueux*, or *sommations respectueuses*, are legal requests, repeated three times—once successive month—made by a young man or young woman having reached the age of majority, calling upon his or her parents to give their consent to the marriage. If, after the third request has been made, the parents continue to withhold their consent, the marriage takes place without it.

(2) Previous to the celebration of marriage, the State official makes two announcements, at a week's interval, in front of the town-hall door, on Sunday ; and a short statement regarding these public announcements is posted up at the town-hall during the intervening week. (*Civil Code*).

No reference, it will be noted, is made in the certificate to the religion of either party.

The reason is that the French civil law was not framed to entrench upon the sphere of religion. It leaves the clergymen of all creeds free to look after their own religious followers.

The stipulation that the civil ceremony must precede the religious one is no more an encroachment upon the domain of the Church, or a blow aimed at its influence or prestige, than is the making of a notarial contract in

continent. He says, "We should all be seeing a City of God finished and the world come to an end." *The Bee*, Calgary, B.C.

For these reasons the Church forbids, under penalty of excommunication, for a long period, a second marriage, and orders separation instead of divorce. Since forbids also marriage between relatives to the seventh degree, for the purpose, the Fathers call us, concerning different families, instead avoiding, in holy desires between blood relations.

Paul Gode also wrote that in the first step was taken in this direction, namely the interpretations of Canon Law. Already in the twelfth century restrictions in marriage, they placed restrictions upon the inheritance of a husband and wife, and, keeping always in view its social function, marriage is a necessary evil, they reached the conclusion, from that time splitting with us, that there should be no such inheritance, no divorce except with the consent of the whole nation of men. Professor of the Faculty of Law at Paris, *Le Maître des Sentences*, in the second edition (1255) p. 110.

It is to be noted that on the part of the children, who are the primary respondents, the study variable, i.e., the perception of the sexual instinct does not have the ability to address *Amor Verus*, in which, however,

1. The first group of variables includes the following:

1. *Chlorophyll a* and *Chlorophyll b* contents were determined by the method of Lichtenthaler and Whistler (1973).

But side by side with this restriction, the Church has held a wider one. Man has a natural right and liberty of conscience and religion, and it is no more negative. This doctrine was promulgated by a hundred synods, the *Visitation*, the *Concord*, and is sanctioned by many theologians.

This research is the product of a grant by the National Science Foundation, which is gratefully acknowledged. The author is indebted to David J. C. MacKay for his helpful comments on an earlier draft of this manuscript.

It is well known that the normal vector \mathbf{d}_i to the hyperplane $\mathbf{d}_i^T \mathbf{x} = 0$ is perpendicular to the plane. If our given vectors $\mathbf{w}_1, \mathbf{w}_2, \mathbf{w}_3$ are all in the plane $\mathbf{d}_i^T \mathbf{x} = 0$, then

regard to the monetary interests of those about to get married, which here as in other countries, must be drawn up and signed before the marriage takes place, whether it be a civil or a religious one, just as a sale must take place before possession can be taken of a house or a piece of land.

It will now, we think, be admitted that our muddled laws regarding civil marriage should be so altered as to facilitate a regular, uniform, and just performance of the ceremony. With this important end in view public officials should be appointed to register the three great events of life : births, marriages and deaths.

We have no hesitation in adding that we would have no objection to entrusting such a task to parish priests, Protestant ministers and Rabbis, provided that the work was done in a uniform manner laid down by law.

III

It is necessary to revert to the Delpit case in order to prove the necessity of such a reform in our legislation concerning marriage as will place that institution upon a satisfactory footing, and give to families the protection and safety to which they are entitled.

We have no reason to think that the Delpits, catholics though they were by the accident of birth, had any mental reservation or secret ulterior design in having their marriage celebrated by a unitarian clergyman. In our opinion, they considered themselves dispensed, by the fact that they had long ceased to be practical catholics, from going through any formality in order to sever altogether their connection with the Church in whose faith they were baptized, and they fully believed that in selecting another religion they made their marriage binding and indissoluble according to the civil law.

But we have some doubt on this point, since the legal authorities whom we have consulted have given us contradictory replies. This lack of accord alone shows that there is a serious defect in our marriage laws.

Freedom of conscience is guaranteed to every subject by the Constitution under which we live. Everybody living in this country may, whether he has been born a catholic, protestant, Hebrew, &c., freely abandon all religious exercises on reaching the age of manhood or womanhood, from motives with which the public has nothing to do.

Now, if a religious marriage is strictly obligatory, and consequently alone valid, it follows that those who profess no religion are condemned to lead a single life, or to resort to concubinage or disorderly conduct, unless they lend themselves to a kind of mockery from which their conscience shrinks, and against the necessity for which our Constitution undertakes to protect them.

If such be really the case, the freedom guaranteed to all citizens is a meaningless and delusive term. It is as well to speak out thus frankly.

Yet it must be admitted that, strictly speaking, marriage can only be made valid by the clergyman of the religion to which the couple, whether believers or not, belonged, even though this might have regrettable consequences in mixed marriages. But if this admission be made without reservation, it would not be possible, in a bilingual and bireligious country like Canada, to recognize in any religion a preponderance over the other. This dominating influence, so inimical to public tranquillity, is exercised by Catholic Church, as is proved by the fact that she has the spiritual power to declare null and void a marriage celebrated by a protestant clergyman, while, on the other hand, the protestant synod is not competent to deliver a similar judgment in the case

of two of its own religious followers who entered the married state before a catholic priest by fraud or otherwise.

This exposition of the inequality of the powers of our two great religious institutions is enough to prove its perils as well as its utterly abnormal character

We do not believe that the Roman clergy favor this undue influence and authority of their Church. On the contrary, we think that they would gladly help to forward any sound movement having for its object the removal of this source of friction in temporal matters between the two creeds

IV.

Now let us briefly discuss the dangers which beset clergymen of both religions under our present marriage law, still taking the Deloit case as an example.

The Rev. Mr. Barnes, who officially celebrated the Deloit-Côté marriage, is, of course, to be presumed to have acted legally and with all due prudence. We take it for granted, therefore, that he asked both of the contracting parties to what religion they belonged, if they consented to be made man and wife, and if the young girl, still a minor, had obtained her parents' consent to her marriage.

If their answers were satisfactory so far as regarded their freedom of action, were they also satisfactory from a religious standpoint ?

Three questions suggest themselves in this connection :

1. Did the contracting parties state that they belonged to the Protestant religion ?
2. Did they declare that they had been catholics by birth, but had long ceased to be so : having no faith in the Roman creed ?
3. Did they affirm that they believed in no religion ?

As to the first, had the Rev. Mr. Barnes any right to go on with the marriage without requiring some proof that they were protestants?

If they answered the two other questions in the affirmative, ought he not to have refused to officiate? (1)

This is a moot point. For if there was any lack of carefulness on his part, he is civilly responsible for the wrong inflicted upon Mrs. Delpit, who claims that no authority in the world can upset her marriage? She would be well within her right in demanding compensation for the annulment of her marriage, which she intended and believed to be indissoluble, inasmuch as she acted in good faith, was under age, and was inexperienced in such a matter.

The Rev. Mr. Barnes could reply that he had no reason to doubt the declarations made to him in his officiating capacity, that it is not for him to discuss the defects or vagueness of the law, that he acted in as good faith as did the future bride who applied for his ministrations, and that the commission he held from the Lieutenant-Governor gave him authority to officiate with any fixed rules.

And no exception could reasonably be taken to his reply, since the law, surprising as it may appear, makes no provision in this important respect. It allows clergymen to officiate at marriage ceremonies without imposing upon them any obligations to assure themselves that no fraud, mistake, or any other similar impediment exists.

The civil law as to elections fairly bristles with provisions designed to secure legal voting, but that as to mar-

1. Mr. Thomas P. Butler, Commissioner for issuing marriage certificates with a recommendation from the jurisdiction of Paris, has testified that when Mr. Delpit and Mrs. C. went to him to obtain these recommendations they both stated that they did not belong to the Catholic religion. It is proper to ask whether the Rev. Mr. Barnes took any steps to find out if this statement were true or not, and if not.

riage contains no such clauses to assure the validity of an act which binds two lives together for life, and on which depends the security of the family, after which society itself and the State itself are modelled.

As the law at present stands, any person who conceals his or her real name, age, profession, residence and parentage, although the same person cannot cash a cheque or a draft without being identified, notwithstanding the circumstances that the very presentation of either presumes the absence of any wrongful intention.

We shall now glance at the most crucial as well as the most dangerous part of the subject—namely, the decrees promulgated by the Roman Church at the Council of Trent respecting the sacramental character of marriage. Every catholic must obey these decrees under the penalty of incurring the Church anathema; and since, as we have already stated, we admit that every church has a right to make regulations as to its own members, we shall refrain from alluding in any way to matters of dogma, for that would be an assumption of a right which we do not and cannot possess. All catholics must accept its teachings, and whoever does not believe in them should not criticize the authority it exercises over its adherents.

But, without touching on dogmatic matters, we may assuredly try, without laying ourselves open to charge of presumptuousness, and without wounding the susceptibilities of anybody, to help forward a reform that would result in the reconciliation of the public interests with the legitimate influence of the Catholic Church.

Allusion has already been made by us to the desirableness of appointing public officials to look after the re-

gistration of births, marriages and deaths. In doing so, we deem it right to affirm that we have not the least desire to infringe upon the privileges enjoyed by the Catholic Church. Such a step would in nowise affect religion, being simply a question wholly civil in its nature.

To prove the gravity and urgency of the reform which we advocate, we shall reproduce the words of Pope Leo XIII. quoted by Canon Archambault in his first Lenten sermon in the cathedral. Said His Holiness :

“ Marriage is the contract itself, and every lawful marriage between christians is itself and by itself a sacrament ; and nothing is more contrary to truth than to contend that the sacrament is an extrinsic property, and can be separated from the contract.”

Leo XIII says distinctly that he is speaking of marriage between christians, or, to be more precise, between catholics. The latter must yield obedience to this doctrine, for their Church is dogmatically a divine institution.

There are amongst our people, however, dissentients who are not guided by the decrees and doctrines of the Roman Church, and over whom councils, the Vatican, and the episcopate can exert no influence. To them the decrees of the Council of Trent are dead-letters. These people, who are sufficiently numerous, would welcome such changes in the law as we demand—changes that would in no degree interfere with the authority or power of the Roman Church.

We quote again from Canon Archambault's sermon :

“ It is a point of catholic doctrine, says Pius VI in his letter to the King of Sardinia, that the sacrament is not an accidental quality superadded to the contract, but it is the very essence of marriage ; so that the conjugal union between Christians is only lawful in the marriage

sacrament. Any other union is really concubinage. A civil law which, based on the idea that the sacrament is divisible from the contract of marriage between catholics, claims to regulate its validity, contradicts the Catholic Church, usurps its inalienable rights, and practically puts concubinage and the sacrament of marriage on the same footing by sanctioning both as legitimate."

Comment on these words is needless.

All that we advocate is that the previous intervention of the civil law should be made obligatory, without, of course, attempting to give this civil procedure the character of a blessing upon the marriage of two catholics or two protestants. The marriage would only be accomplished in fact after the administration of the sacrament or the bestowal of the nuptial benediction according to the observances of the religion of the contracting parties. Such a provision in the law would simply prevent marriage between persons not legally qualified to enter upon that state of life, and, as a consequence, would render such cases as that of the Delpits impossible. The public officer would make out the certificate, which would be merely a guarantee that no impediment, nothing that could afterwards affect the validity of the contract, existed; and only on this certificate being produced could marriage be celebrated.

There is nothing that we can see in this reform calculated to affect the beliefs of any part of the population, or hurt the feelings of clergymen, while it would be an efficacious preventive against dissolutions of marriage, which assuredly it must cause the Church some sorrow to pronounce.

Our task is finished with the demonstration of the necessity of this change in our marriage laws.

We hope that some member of the legislature will take up the question, that he will find many other members

willing and anxious to support so necessary a reform. and the legislature will give us a law that will render impossible in the future any of those scandals which bring shame or despair into family circles.

Montreal. March 15, 1901.

APPENDIX

No. 1

TESTIMONY OF EDOUARD DELPIT,

On the 19th of May 1900.

PART I

1. What are your name and surname ?

My name is Marie-Dominique-Jean-Edouard Delpit.

2. What is your age ?

I am twenty-nine years of age.

3. What is your occupation ?

I am civil employee.

4. Are you a Roman Catholic ?

I am a Roman Catholic.

5. Do you perform your religious duties ?

I do not always perform regularly my religious duties.

6. Are you Mr. Delpit, who petitions the Ecclesiastical Authority to declare his marriage with Miss Berthe Côté null on the ground of clandestineness ?

I am Mr. Edouard Delpit who is petitioning Ecclesiastical Authority to annul his marriage with Jeanne Berthe Côté, solemnized on the 2nd day of May 1893.

7. You acknowledge the petition signed by you and addressed to His Lordship on the 17th day of March instant ?

I do.

8. Do you persist in your request of having your marriage declared null ? Does it seem to you that a reconciliation and a subsequent marriage are impossible ?

I persist in my demand. I look upon a reconciliation with the said Jeanne B. Côté as absolutely impossible.

9. Do you consider the marriage and baptism certificates presented by you as authentic ones ?

I do.

10. Do you admit the indissolubility of marriage ?

I admit that the christian marriage can be dissolved only by the death of one of the contracting parties, or is liable to be dissolved by an impediment recognized by the Catholic Church.

11. Do you know the importance of the oath you have just taken ?

I do.

12. When were you married ?

On the 2nd day of May 1893, in Montreal.

13. With whom ?

With Marie B. J. Côté

14. How old was she ?

She was 16 years of age at the time of our marriage.

15. Was she a catholic ?

She also belonged to the Catholic Church.

16. Have you been married with the consent of her parents ?

We were married with the consent of her parents.

17. Why have you been married by a protestant minister ?

I was married before a protestant minister because it was her father's wish. I did not endeavor to have the marriage solemnized by a catholic priest. Miss Côté's father thought proper that his daughter should be married before a protestant minister. Probably, because at that time he indulged in Spiritism. I could not say if he thought that himself was excluded from the Catholic Church for that same reason. I know that at that time he did not perform his religious duties as a catholic. I do not know if the girl would have liked to have her marriage solemnized by a catholic priest. She did not express any wish of that kind. In going before the protestant minister to be married I did not think that I was renouncing my faith. I thought that I was still belonging to the Catholic Church.

18. Did you make a declaration to the protestant minister about your quality of catholic ?

I did not declare to the protestant minister that we were catholics. Had he asked me such a question I would have declared that I was catholic and I am convinced that Miss Côté would have answered the same.

19. Do you believe in the validity of your marriage ?

At that time I believed that I was contracting a valid marriage before the minister and I thought so till lately.

20. You did not know the ecclesiastical impeachment or clandestineness ?

I did not know that impeachment of clandestineness ; that is why I considered my marriage as a valid one.

21. Did you always belong to the Roman Catholic Church, at heart and by will ?

I always belonged to the Catholic Church at heart and by will.

22. Were you not a member of the puritan sect of the Congregationalists ?

I never belonged to any protestant sect.

23. Did your wife ever leave the catholic religion ?

Miss Côté never ceased to be a catholic : she never professed to belong to any other Church than the Catholic Church. After our marriage we kept going on at the catholic church. We have had three children who were baptised in the catholic church.

24. Are you separated as to bed with Mrs. Delpit ? If so where lives Mrs. Delpit ?

I am separated as to bed with Miss Côté ; she lives with her father in Montreal since two or three weeks. I did not speak to her for many months and I do not know what she intended to do when she left me.

25. Did you ever practise Spiritism or any other practices condemned by the Church ? if so, did you believe that you were still a catholic ?

I attended some meetings of Spiritism and I thought then that I was still a catholic.

26. Has Mrs. Delpit always been a catholic ? Did she not renounce her catholic faith ? Was she a member of any heretical sect ? Did she take part in or attend protestant religious ceremonies ? And what was her aim in

doing so ? Did she practise Spiritism ; did she practise at the same time her religious duties as a catholic ?

|| Miss Côté, so I believe, attended regularly her religious duties at the time of our marriage, and I don't believe she contemplated the idea of renouncing her faith while attending Spiritism Meetings. At the time of our marriage I belonged to the diocese of Montreal and since I resided in Montreal and in Quebec. I don't believe that Mrs. Delpit, or Miss Côté, had any suspicion on the validity of her marriage. It was never discussed between us whether I was a catholic or not ; I belong to a truly French catholic family which prides itself of having ecclesiastical dignitaries amongst its members.

(Signed) E. DELPIT.

No. 2

TESTIMONY OF MR. DELPIT.

THE 30TH DAY OF APRIL 1900.

PART II.

1. You are Mr. Edouard Delpit, party in the case for nullification of marriage, Delpit *vs* Côté ?

Yes. I am Edouard Delpit the petitioner to have his marriage with Miss. J. B. Côté declared null.

2. When did you leave France ?

In April 1888.

3. At that time you were a catholic and practising your religion ?

I was then a catholic and was then practising my religion.

4. Later did you only neglect to perform your religious duties or have you accepted the protestant errors ?

Later, I never accepted the protestant errors. In my first testimony I admitted that I have not always

practised my religion, but I have always remained a catholic.

5. Is it not according to your wish that a unitarian minister was chosen to solemnize your marriage? And is it not because that creed was in accordance to your ideas? If not, what was the reason of that choice?

It is not in accordance with my wish that a minister of the Unitarian Church was asked to solemnize my marriage. It was in accordance with the desire expressed by my father-in-law.

The reason why I accepted this minister, lays in the wish as expressed by my father-in-law. I do not believe that Miss Côté had anything to do with the choice of a minister; she never said a word about that before me. Never did she express surprise or pleasure to be married before a minister. At that time I was engaged to another young lady; Miss Côté was aware of the fact and she wanted to hurry up. Besides, at that time Mr. Côté was devoted to spiritism, and for that reason, very likely, was afraid to call on a catholic priest.

6. Were you acquainted with the family Côté long before your marriage?

I have been acquainted with the Côté family two or three months previously to my marriage. I know they were looked upon as catholics, though in the meantime indulging in practices of spiritism.

7. Did you then know anything about the religion of that family? Was she not reputed a protestant family?

She was not called to my knowledge, a family of apostates.

8. Do you know where Miss Côté was educated?

At the time of my marriage I know that Miss Côté had been educated by the Sisters of the Congregation, in Mrs. Marchand's academy and in another catholic academy which name I do not remember. She often spoke to me of the Congregation convent and in particular of Mr. Saurin whom she kept in great esteem.

9. Did you know that she had been a pupil in the French Methodist College?

She never told me that she had been a pupil at the French Methodist College, which college I do not know.

10. Were you not told of the reason why she quitted the Sisters' convent?

She never told me why she left the Congregation convent.

11. Were you aware of the fact that according to certain conventions passed between Mr. Côté and Mrs. Marchand, this last was forbidden to give Miss Côté a catholic religious education ?

I am not aware that according to certain conventions between Mr. Côté, my father-in-law, and Mrs. Marchand, this lady was instructed to give Miss Côté an education anti-catholic.

12. At the time of your marriage, did Miss Côté tell you that she was a protestant ?

No.

13. Did she then tell you that she was catholic ?

She did not tell me that she was a catholic, but all her friends were such ; she always kept a rosary of beads on her person and a prayer-book, at the time of her marriage she had a roman parishioner.

14. Did you never ask her that ?

I never asked of her if she was catholic : I always considered her as such.

15. Has Mrs. Delpit, a short time after her marriage, behaved as a catholic ? If so, when, where and in what circumstances ?

A short time after our marriage we went at Louiseville in a family by the name of Caron, where my wife used to go to the Catholic Church of that place. She always said her prayer ; she went so far as to say the rosary with the family Caron. She never laughed or gested at the prayers said in common by the members of that family. I was convinced that she was a catholic.

16. After your wedding trip, did Mrs. Delpit fulfil the duties of the catholic religion, did she hear mass ? Or was she going regularly to the protestant meetings.

She used to visit the Catholic Church : she heard the mass. She has never, to my knowledge, gone in a Protestant Church : when she became a mother, the care of her child kept her from going to Church as often as before. I told her many times that it was much better for her to look after her children in her house than go and hear the mass. Since the time of our marriage, I never saw in our house a protestant minister, in the

quality, either of a friend, of a minister or in order to engage my wife to change her catholic religion.

17. When was your first child born?

I believe that my first child was born on the 15th of August, 1894.

18. Was he baptized a few days after his birth.

He was baptized the day after or the second day after, in Notre-Dame Church. Mr. Côté, my father-in-law was the godfather; the priest who baptized my child did not raise any objection to Mr. Côté being godfather. Accordingly I consider Mr. Côté himself as a catholic. If he had been considered as a protestant, I suppose that the priest would not have accepted him as a godfather. The godmother was Mrs. Derome, sister of Mrs. Côté, aunt of my wife and a very pious catholic woman.

My wife, Mrs. Delpit, did not object to the baptism of her child at the catholic church.

19. After the birth of her child, was Mrs. Delpit in the habit of frequenting the catholic church with the intention of practising that religion?

After the birth of that child, Miss Côté, my wife, practised her catholic religion as usual, to my knowledge, she always kept the same catholic faith. From the time of our marriage, she always kept in our sleeping-room, some small statues of the Virgin, etc.

20. Can you state what was the reason for her coming back to the catholic faith?

When many members of my family had come in this country she was allowed to practise the catholic religion in a more regular way, because she had more time; and also because she was no more obliged to look after her children. She had in her room a reliquary containing relics of what saints I do not know: this reliquary was given back to her grand-mother when this last one came to live with one of her sons. She had in her possession a picture representing the Holy Virgin painted by her mother.

21. The family of Mr. Côté must have been considered as a protestant one since at the time of Mrs. Côté's death she was buried in a protestant burying ground? Did Mrs. Delpit raise any objection to that burial and did

she ask that the burial be made in a catholic burying ground?

Her mother, Mrs. Côté, was buried in a protestant burying ground, but that was against the will of the whole family, who said that it was not proper for a catholic to be buried in a protestant ground. When the last rituals took place, Mrs. Derome vehemently protested. As a fact, I am not aware that my wife made any protestations about that. At the time of the burial of Mrs. Côté, her relations protested, but I am not aware that they asked to have the burial made in the catholic ground.

Contrary to what is asserted, at the time of my marriage I never boasted of incredulity. Mrs. Delpit never told me that she belonged to the Unitarian creed.

After having heard the evidence given by Mrs. Delpit, I consider as fallacious all her sayings that she was a protestant. The minister who married us did not ask me if I was a catholic. Had he asked me such a question I would have answered yes. I never came in Mr. Côté's family as a non-catholic. I assert positively that I am a catholic.

I was cognizant of Mr. Côté's second marriage, I could not say if he was married as a protestant.

(Signed) EDOUARD DELPIT

No. 3

TESTIMONY OF MRS. EDOUARD DELPIT

(Mother of Mr. E. Delpit).

On the 26th of April 1900.

1. Please tell us what is your name and surname, your age, your condition, the place of your birth?

My name is Marie Amélie Joséphine Charrier; I am 50 years old. I am widow of Antoine Adrien Edouard

Delpit, literary man, ex-prefect, ex-inspector general for the paper and the printing matter of the Minister of the Interior in France

I am catholic and attend my religious duties.

2. You are Mrs. Delpit, mother of Mr. Edouard Delpit, party in the present case?

I am the mother of Mr. Edouard Delpit, who is asking for the annulment of his marriage with Jeanne Berthe Aurore Côté.

3. What is your religion and your family's religion?

My family belongs to the catholic religion; in my family there were many members of the priesthood and even a bishop who died a martyr in Japan, Mgr. Daveluy. Every member of my husband's family was a good catholic and also a practicing one.

4. You know all the importance of the oath under which you are?

I know the importance of the oath under which I am.

I know the doctrine of the Catholic Church upon the indissolubility of marriage and would I believe in the validity of my son's marriage I would oppose all endeavors to have it annulled.

I don't know exactly the date of my son's marriage; I heard of it only six months after. As to the kind of marriage which he contracted, I was apprised of it only in the month of January last.

5. You were away from Canada at the time of your son's marriage?

I was in France at that time.

6. Since when are you in this country?

Hardly two years.

7. Since when is he, Mr. Edouard Delpit, in Canada?

My son went away from France on the 10th April 1888; he was not quite eighteen years old.

8. Did he always belong to the Catholic religion, born, baptized and brought up in that religion?

He was born, baptized in the Catholic Church, and was educated in religious institutions; he made his first communion at the Jesuit's College, at Sarlat, Dordogne; he was also confirmed at the same place.

9. Previous to his departure from France, had Mr.

Edouard Delpit abandoned his religious duties? At least neglected to perform his religious duties?

At the time of his departure for Canada, my son Edouard had showed no evidence of incredulity, and when he came back to France, four years after, he still used to perform his religious duties.

10. Did he give up his faith since his coming in this country?

and

11. Did he write to you while you were in France and him in Canada? From the reading of his letters did you ever understand that he renounced the Catholic religion, or that he had become a protestant?

A year after his departure for Canada, I could see in reading his letters, that there was a small change in his religious feelings; but I never understood that he had renounced his religion, nor that he was professing protestantism. He wrote to me about spiritism, and I told him to be careful.

12. Did he write you any particulars on Miss Jeanne Berthe Aurore Côté's religion, education? If yes, what were those particulars?

He never mentioned Miss Jeanne Berthe Aurore Côté in the letters he wrote to me. The first time he spoke to me of her, he told me she had been brought up in a convent. He told us that the brother of that young girl's father was a priest.

13. Did he say to you that Mrs. Delpit was a protestant, or that she was professing spiritism?

He never told us that she was a protestant, or professed spiritism. I knew this only when I came in Canada. She did not herself profess spiritism.

14. Did he inform you that his marriage had been solemnized by a protestant minister?

I never was informed by my son that his marriage had been solemnized by a protestant minister. I heard of this only in the month of January last.

15. Did he tell you why his marriage was solemnized before a protestant minister?

He told me it had been done so according to the wish of his father-in-law. I was told that the reason of this was in order to save money, but I believe that the main reason was to quicken the said marriage.

16. Were you never told that Mrs. Delpit was a protestant at the time of her marriage? That her family was protestant?

I never heard that Miss Jeanne Berthe Aurore Côté was a protestant.

17. Did you ever know Mrs. Delpit as a catholic?

I always knew her as a catholic; she used to keep in her room statues representing the Holy Virgin. Besides, I know as a fact that she went to confession and received the holy communion.

18. You are not aware that she was a frequent visitor in the protestant meetings, with the intention of becoming a protestant?

I never was aware of the fact and never heard that she had been a frequent visitor of protestant churches; she never told me that her marriage had been solemnized by a protestant minister. When she told me about her marriage, she believed in its validity.

19. Is it not a fact that Miss Côté's family was considered a protestant one?

I am not acquainted with the family of Miss Jeanne Berthe Aurore Côté; however, I was always said that it was a catholic family. Only I heard that Mr. Côté, the father of Jeanne Berthe, was considered an *esprit fort*.

20. Is Mr. Delpit still a catholic?

My son Edouard, I am convinced of the fact, is still a catholic, though he does not practise as I would like him to do, but I hope that he will do so.

The character of Jeanne Berthe Aurore Côté is a strange one; to me she seems to be very hypocritical, and very selfish. She lies with so much pluck that I think she is unconscious of the fact. I do not think I could believe her even under oath.

In my estimation she has a great interest against the nullification of her marriage; she has a pecuniary interest. It is possible that both parties believed in the validity of their marriage.

I do not believe Jeanne Berthe Côté when she asserts that my son, at the time of his marriage, was not a catholic; through respect for his parents, he would have not turned his religion without telling us about it. I do not believe her when she asserts that my son Edouard has always been a protestant previous

and since his marriage. My son's children were baptized in the catholic church and that was not done at the request of Mrs. Delpit. As Mrs. Delpit claims to have become a catholic eighteen months ago, and as her last child has been baptized two years and a half ago, evidently, it could not be done at the request of Mrs. Delpit, but at my son's request. To my knowledge, my son, Mr. Delpit, never assisted to any protestant meetings. Judging from the thoroughly christian education received by my son, I would not believe that he was the first to ask have his marriage solemnized by a protestant minister. Even, I would rather think, and such was my late husband's conviction, that in all that matrimonial affair, my son Edouard was under the influence of hypnotism, and that he would have never thought of this marriage had he enjoyed his free will.

In the family's intimacy, all that past soiled with protestantism, these anti-religious practices, never were mentioned, the word *protestant* was mentioned at all only when came the question of the annulation of the marriage. My son never told me a word concerning his marriage or his intention of becoming a protestant. Mrs. Edouard Delpit never spoke a word to me that could make me believe that she was a protestant.

Concerning the baptism of his first child, my son, Edouard, wrote to me that his son was born, that he had been christened, and gave me also the godmother's name, a lady by the name of Derome.

The children have been brought up by the father; the first one was sent in France, when three years old; at that time he was totally ignorant on religion, but he was so young, his mind was not much developed, he could hardly talk.

I heard that Mrs. Delpit had quitted the convent on account of her bad health, because she was always sick. She went so far as to say that her mother had vowed her to the blue color, and that her friends had nicknamed her *la petite bleue*. She said so to prove that her mother was a devout woman. We have seen things that gave strength that up to the time of her marriage, she had been vowed to the blue color.

No. 4

TESTIMONY OF NORBERT FAFARD, PHYSICIAN.

Q. What are your name and surname ?

A. My name is Norbert Fafard.

Q. How old are you ?

A. Fifty one years old.

Q. What is your occupation ?

A. Physician.

Q. Are you catholic ?

A. Yes.

Q. Do you perform your religious duties.

A. To my best.

Q. You know the importance of the oath under which you are ?

A. Yes.

Q. You admit the obligation of telling the truth, all the truth, and nothing but the truth in answer to the question that shall be put to you ?

A. Yes.

Q. Are you acquainted with Edward Delpit ?

A. Yes.

Q. Since when ?

A. From the time of his marriage.

Q. Did you know him at the time of his marriage, 1893 ?

A. I have been acquainted with him at that time. I have been his physician while he was in Montreal.

Q. Was he considered as a catholic ? Did you know him as such ?

A. I never made any inquiry about that.

Q. Are you acquainted with Mrs Delpit, born Jeanne Berthe Côté ?

A. Yes.

Q. Since when ?

A. From her childhood. I knew her when she was a young girl.

Q. Did you know her at the time of her marriage with Mr. Delpit ?

A. Yes.

Q. Did you know her as a catholic ?

A. I thought that the father was a catholic and for the same reason I thought the daughter was a catholic. But at the same time, I knew that they were practising a religion of their own : The spiritism, and they believed themselves it was an independent religion.

Q. Do you know the difference existing between a behavior as condemned by the Church and leaving formally the Catholic Church ?

A. Yes.

Q. Do you know if Mrs. E. Delpit, born Jeanne Berthe Côté, has ever formally renounced the catholic faith ?

A. No, not that I know of.

Q. What faith did she adhere to ?

A. I do not know ; I do not believe that she ever adhered an other faith than the catholic faith

Q. Did she publicly attend a protestant church as an adept of that church ?

A. For my part I do not know ; I heard it.

Q. Was she known as having renounced the catholic faith ?

A. No, not to my knowledge.

Q. Do you know if Mrs. Delpit was married before the Catholic Church or before a protestant minister ?

A. For my part, I do not know, but relatives of Mrs. Delpit said that she was married before a protestant minister.

Q. Before what minister ?

A. I do not know.

Q. Of what denomination ?

A. I do not know.

Q. Why was Mrs. Delpit married before a protestant minister ?

A. I do not know.

Q. Has one or the other renounced his faith ?

A. I don't think so.

Q. How old was Mrs. Delpit at the time of her marriage ?

A. About 16 years, I believe ; about 16 or 17 years.

Q. Since how long had she left the convent where she was educated ?

A. I think she had just left the school when she married.

Q. When she was a pupil at the convent did she show any intension of abandoning her faith ?

A. I do not know.

Q. Did you meet Mrs. Delpit socially ? between the time of her coming off from the convent and her marriage ?

A. Naturally, I met her at her father's when I went there.

Q. Did you talk with her ?

A. Yes, sometimes.

Q. Did she tell you that she had renounced to the catholic faith ?

A. No.

Q. Did she declare that she was practising spiritism ?

A. She did not say so, but I saw it by myself. I attended meetings where she was herself practising spiritism.

Q. Are those practices forbidden by Church that kept her from fulfilling her religious duties ?

A. I do not know if these practices are completely forbidden by Church and kept her from practising her religious duties as a catholic.

Q. Did you know of her marriage ?

A. Yes.

Q. Did you go and pay her a visit on that occasion ?

A. Yes sometimes ; afterwards there was sickness in the family. I was the family physician.

Q. Did she speak to you about the solemnization of her marriage by a protestant minister ?

A. No, I did not have any occasion to converse with her about it.

Q. Immediately after her marriage did she not show by her religious actions that she was a catholic, such as going to church or attending public prayers ?

A. At my knowledge, I know that her first child has been baptized in the catholic church. I do not know any other action of her life.

Q. Were her children baptized ?

A. The first one has been : as for the other I do not know.

Q. When was her first child born ?

A. About five or six years ago ; about six years ago. About one year after the marriage, I suppose.

Q. If her first child has been baptized she then seemed to be a catholic ?

A. Well, it tended to show that she was a catholic. To tell the truth she did not seem to practise her religion.

Q. Did she pretend having renounced her faith ?

A. No, I do not believe it. She never talked to me about it.

Q. When ?

A.

Q. How ?

A.

Q. Is she a catholic to-day ?

A. I believe so. I do not know.

Q. Does she perform her religious duties ?

A. I don't know it personally.

Q. If she is a catholic to-day and if she renounced her faith formally when has she renounced her protestant errors ?

A. I know nothing about it.

Q. With the permission of what bishop ?

A.

Q. Which priest received it ?

A.

Q. Where is her written renunciation ?

A.

Q. Don't you think that she claims having renounced her faith, to actually serve her interests towards the validity of her marriage ?

A. I do not know what are her afterthoughts.

Q. Do you know where Mr and Mrs. Delpit made their wedding trip ?

A. I believe that they made it in Montreal. I don't think that they went out of town.

Q. At Louiseville where they went did Mrs. Delpit attend the catholic church ?

A.

Q. Did she not behave as a catholic ?

A.

Q. Why in so short a time did she change her religion and came back to her first religion ?

A.

Q. Have you any particular remarks to add to your declaration ?

A. None.

Q. At your knowledge did Mr. Delpit look upon his wife as having renounced the catholic faith ?

A. I do not believe so.

Q. Why was he himself married before a protestant minister ?

A. He never mentioned it to me. It was his own affair.

Q. Is it not out of respect for his wife who then declared that she was a protestant ?

A. I do not believe so.

Q. Did he believe that he was to be married with a protestant ?

A. No, I do not believe it. He is an intelligent man : he knew well that she was not a protestant.

Q. Did he speak of it to some of your acquaintances ?

A. No, as far as I remember.

Q. Did he try to bring her back in the catholic faith ?

A. No, as far as I know.

Q. Which ?

A.

Q. Did he believe at the validity of his marriage even when solemnized by a protestant minister ?

A. I believe he did

Q. Why ?

A. Because every body thought so. I myself thought that the marriage solemnized by a protestant minister or a catholic priest is a valid one. Lately I hear that it is not so. He must have had the same ideas as I had. I understood that two catholics were out of the Catholic Church and that in order to come back in that Church their marriage ought to be solemnized..... but I thought the marriage a valid one.

(Same question)..... Q. Then, in your estimation the marriage of two catholics before a protestant minister is a valid one ?

A. It seemed so to me.

Q. Was he not acquainted with that law of the Church which renders null the marriage of two catholics before a protestant minister ?

A. I don't think so : he must not have been acquainted with that fact.

Q. If he did not know that rule he must have believed

that he was marrying a catholic since to the present time he considered his marriage as a valid one ?

A. I know nothing about that.

By the defensor of the matrimonial tie

Q. At the time of her marriage with Delpit did you consider Mrs. Jeanne Côté as a catholic or a protestant ?

A. I considered her neither as a catholic nor as a protestant. They had a religion of their own and her mother at the time of her death was out of the Catholic Church though she had not abjured. I considered her daughter as outside of the catholic religion and practising Spiritism.

By the Judge

Q. Her mother died without being heard in confession ?

A. Yes.

No. 5

TESTIMONY OF ALLAN BERNARD CÔTÉ,

On the 16th of April 1900.

1. Do you swear upon the Holy Evangelists to tell the truth, the whole truth and nothing but the truth.

I swear upon the Holy Evangelists to tell the truth, the whole truth and nothing but the truth.

2. Please tell us your name and surname, your occupation and the place of your residence.

My name is Allan Bernard Côté. I am 47 years of age. I am civil employee. I reside at No 362 Dorchester St.

3. Are you a relative of Jeanne B. Côté, defendant in this case ?

I am the father of J. B. Côté, defendant in this case.

4. Do you believe in religion ? If so in which : 11

not did you ever belong to any and since when did you leave it ?

I have belonged to the Catholic Church. I left it 15 years ago.

5. Did you ever made any public action by which you renounced the catholic faith ? If so where, when and before whom that renunciation was received ?

I never made any action by which I renounced the catholic faith.

6. What is the reason of your saying that you belonged no more to the catholic faith ?

I left the Catholic Church because I did not believe in it. Furthermore I do not belong to any religious sect.

7. Do you think that the fact for you of practising Spiritism sets you aside of the Catholic Church ?

I do not believe so.

8. Did you ever belong to any protestant church ?

I never belonged to any protestant religion

9. To which religion do the members of your family belong to ?

My first wife did not die in the catholic faith. She left this Church at the same time as I did. My father and my mother were catholics.

10. Could you say why your daughter Jeanne Berthe was married before a protestant minister ?

My daughter was married before a protestant minister because Mr. Delpit did not practise the catholic religion. He asked me my advice and I told him to go before the minister of the Unitarian Church, as being the church standing nearest to my own belief

11. In what religion was your daughter Jeanne Berthe baptized and educated ?

My daughter Jeanne B. has been baptized and brought-up in the catholic religion

12. Is your wife a catholic and does she perform her religious duties ? If not since when has she left the practice of her religious duties ?

I have answered this question as far as my first wife is concerned. My second wife is catholic.

13. At the time of her marriage with Edouard Delpit did your daughter still belong to the catholic faith ? On what ground do you lay your assertions ?

My daughter did not belong to the Catholic Church

because she was then following the creed of her mother.

14. Since what time did your daughter Jeanne Berthe give up the practice of the catholic religion and for what reason ?

She has abandoned the catholic religion from the age of ten years, she could not do otherwise than follow her mother's ideas.

15. Has your daughter Jeanne Berthe made in an act or deed by which she declares her intention of abandoning the catholic religion ? If so, where, when and before whom ?

She made no authentic deed in a solemn manner by which she declared her intention of abandoning the catholic religion, but the year previous to her marriage she was boarding in a French methodist college from the month of October to the month of January.

16. Previously to her marriage was she a visitor of the catholic church ? Did she fulfil the duties of this religion ?

Before her marriage she was not a visitor of the catholic church ; she did not fulfil duties prescribed by this religion.

17. At the time of her marriage has your daughter expressed the wish that it be solemnized by a catholic priest ?

At the time of her marriage my daughter did express no such wish.

18. To your knowledge did she express this intention before other people ? If so, before whom

To my knowledge she has expressed no such wish.

19. After her marriage did she use to go to the catholic church and did she fulfil her religious duties ? If so, since what time ?

I am not aware that while in Montreal she performed her duties in the catholic church.

20. Had your daughter Jeanne Berthe had any share in those practices of spiritism ?

Yes, she had a share. Spiritism is the evocation of souls, the foresight, etc.

21. While sharing those practices of spiritism has your daughter Jeanne Berthe renounced the catholic religion

No.

22. Do you see a difference between the fact of not

glecting the religion and the fact of renouncing the same religion ?

There is a difference between the fact of renouncing to your religion and neglect to fulfil your religious duties. As for myself, I have renounced the catholic faith.

23. Can you assert that your daughter, at the time of her marriage, had not only neglected her religious duties but had also renounced the catholic faith ?

A. I can also state in a positive manner that my daughter Jeanne Berthe Côté had not only neglected to fulfil her religious duties but had also renounced the catholic faith.

24. At the time of the solemnization of the marriage of Jeanne Berthe Côté with Edward Delpit, did the protestant minister ask them to what religion they belonged to ?

The minister knew me and no such question was asked.

25. What has Edward Delpit said about that ?

In as much as I can remember he said nothing to the minister about that.

26. And your daughter to what religion did she say that she belonged to ?

It was the same with my daughter.

27. Did you make any declaration about that ?

I have made no declaration about that.

28. Have you anything else to add ?

I must add that after she left the methodist school she went at Mrs. Marchand's academy for a year. I instructed Mrs. Marchand to give no religious education to my daughter. However, my daughter when nine years of age, made her first communion and was confirmed in the catholic church.

No. 6

TESTIMONY OF MARIE ERILDA DEROME,

ON THE 7TH DAY OF MAY 1900.

1. Do you swear on the Holy Evangelists to say the truth, all the truth and nothing but the truth?

Yes, sir.

2. What are your name and surname?

Marie Erilda Derome.

Q. Your age?

A. 21 years.

Q. The place of your residence?

A. 327 Dorchester St., Montreal.

Q. What is your religion?

A. Catholic.

Q. You know Jeanne B. Côté?

Yes, sir.

Q. Did you see her often before or after her marriage?

A. Very little.

Q. Did you consider her as being a catholic then?

A. No.

Q. Will you say why?

A. Because I never saw her practising any religion. Nevertheless she made her first communion a year previous to me.

Q. Where did she make her first communion?

A. Attending then Miss Genesoux's academy (this lady is dead now), she made her first communion at St. James church. Since her first communion I never saw her accomplishing any religious duties.

Q. Did she then express the desire to attend the catholic church?

A. I do not recollect.

Q. Did she ever let you know that she had left the catholic faith?

A. No, she never told me so.

Q. Did she state that she was a protestant?

A. No, she never did. I saw her very seldom. We never talked this matter over between us.

Q. Did she tell you that she attended the methodist school?

A. Yes, I knew she did.

Q. Do you know if she behaved herself as a protestant scholar?

A. I don't know.

Q. Do you know if she performs the duties of the catholic religion?

A. Well, she performed her easter duties at the same time as I did myself.

Q. Do you know when she returned to the catholic faith?

A. No. All I can say is that, being in Montreal, this year, she performed her easter duties at the same time as I did myself.

(Signed) MARIE ERILDA DEROME.

No. 7

TESTIMONY OF REV. CLAUDE PERRIN,

Priest.

THE 9TH DAY OF MAY 1900.

1. What are your name and surname, your age, your occupation and the place of your residence?

My name is Claude Emile Perrin. I am 64 years of age, I am a catholic priest and I live in Montreal.

2. You know the importance of the oath you have just taken?

I do.

3. Do you know Mr. Edouard Delpit? Since how long? Did you know him at the time of his marriage in 1893?

I knew Mr. Delpit at the time of his marriage. I made his acquaintance a little before.

4. Was he considered as a catholic? Did you know him as such?

I knew him as a catholic but at the same time as a rationalist, like a great many of his countrymen.

5. Did you know Mrs. Delpit, born Jeanne Berthe Côté? Since how long? Did you know her at the time of her marriage with Mr. Delpit?

I know Jeanne B. Côté since she was about ten years of age.

6. Did you know her as a catholic?

At the time of her marriage I looked upon her as a catholic. As she was very candid she followed her parents who were formerly practising catholic but who were then spiritualists. For my part they seemed to be still catholic.

7. Do you know if Mrs. E. Delpit, born Jeanne B. Côté, has ever formally renounced the catholic faith?

I do not know if Jeanne Côté has renounced the catholic faith?

8. What other creed did she accept. Has she ever publicly frequented a protestant church as an adept of that church?

I do not know if she ever followed any protestant religion. I do not know if she ever went to a protestant church.

9. Do you know if Mrs. Delpit was married before the Catholic Church or before a protestant minister?

I cannot exactly certify that Jeanne B. Côté was married before a protestant minister, but I heard it.

10. Why were Mr. and Mrs. Delpit married before a minister?

The marriage was performed by a protestant minister because, so I think, Mr. Delpit did not care about religion. But I am inclined to believe that Jeanne Côté would have willingly been married by a catholic priest if her family had not raised objection to it.

11. Did one or the other renounce his faith?

Positively I do not know if one or the other had renounced to the catholic faith.

12. Socially, between her departure of the convent and her marriage did you talk with her? Did she tell you that she had renounced the catholic faith?

I talked with Jeanne Côté between her departure from the convent and her marriage. She never told me that she had renounced her faith.

13. Did she tell you that she indulged in spiritualism. Was she estranged from the catholic religion by the practice forbidden by Church?

She indulged in spiritualism, but I do not think she was aware of any thing wrong in doing so. She was only following the example set by her parents.

14. Were you apprised of her marriage? Did you go and visit her on that occasion? Did she mention to you the fact of her marrying before a protestant minister?

I knew of her marriage, but she did not tell me any thing of her intention to marry before a protestant minister.

15. Immediately after her marriage, did not she behave as a catholic in attending the catholic church or in taking part in public prayers, &c?

I do not know what she did after her marriage as far as religion is concerned

16. Does she claim having renounced her faith?

I do not know if she has renounced her faith?

17. If she is a catholic now having renounced her faith formerly, when has she renounced her protestant errors?

I know nothing about it.

18. Don't you think that she claims having renounced her faith in order to strengthen her case and secure the validity of her marriage?

I do not know what is her aim in saying that she has renounced her faith because I did not see her since.

19. At the best of your knowledge did Mr Edouard Delpit look upon his wife as having renounced the catholic faith? Why did he himself go before a protestant minister?

All I can say is that Delpit did not care a straw about the catholic religion. It was indifferent to him whether to be married before a catholic priest or before a protestant minister.

20. Did he try to influence his wife in order to bring her back in the catholic faith?

I should rather think that his influence would have tended to pervert her. Unless, he changed since.

21. Did he consider his marriage as being valid,

even as being solemnized by a protestant minister? Why?

Yes, Delpit thought his marriage as being valid. I come to this conclusion by their actions. They were introduced as wife and husband amongst the social world.

22. Did he not know this law of the Church, which renders null the marriage of two catholics before a protestant minister? If he knew it, then he thought he was marrying a protestant, he has until now looked upon his marriage as valid?

Delpit did not care about this law of the Church. I don't know if he knew it.

23. Have you anything to add to your testimony?

No, excepting that Jeanne Côté was a young girl without a will of her own, following those who surrounded her and practised spiritualism: by those surrounding her, I mean her family, her father and above all her mother.

(Signed) C. E. PERRIN.

No. 8

TESTIMONY OF EMILIA CAMPBELL,

(Wife of Elzéar Derome).

(ON THE 7TH MAY, 1900).

1. What is your name and your surname?
Emilia Campbell, wife of Elzéar Derome.
2. What is your age?
Forty years old.
3. What is your condition?
That of a married woman.
4. Are you a catholic?
Yes sir.
5. Do you fulfil your religious duties?
Yes sir.

6. You are aware of the importance of the oath that you have just taken ?

Yes sir.

7. You recognize the obligation of saying the truth, all the truth and nothing but the truth in answer to the questions that will be put to you ?

Yes sir.

8. Do you know Mr. Edouard Delpit ?

Yes sir, I know him.

9. Since when ?

Since his marriage with my niece.

10. Were you acquainted with him at the time of his marriage in 1893 ?

No sir.

11. Was he considered as being a catholic. Did you know him as such ?

Previously to his marriage, no sir ; I did not know him.

12. Did you know Mrs. Delpit, born Jeanne Berthe Aurore Côté ?

Yes sir.

13. Since when ?

From the time of her birth.

14. Were you acquainted with her at the time of her marriage with Delpit ?

Yes sir.

15. Did you know her as a catholic ?

She was practising no religion at all. That is to say she did not practise her parents' religion ; she followed the religion of her parents from the time of her first communion.....

16. You know the difference there is between behaving in a way condemned by the Church and secede formally from the Catholic Church ?

Yes sir.

17. Do you know if Mrs. Edouard Delpit, born Jeanne B. Côté has ever formally given up the catholic faith ?

To my knowledge, no.

18. What other creed did she accept ?

Ah, I cannot say if that may be termed practising, but I know she did not follow the Catholic Church and was given to spiritism.

19. Did she go publicly to a protestant church as an adept of that church's creed ?

I cannot say ; it is not to my knowledge.

20. Was she known as having renounced the catholic faith ?

Yes, in this way. Her mother had been called at the school..... I talked over this matter with Mrs. Marchand, and said that her daughter would not be compelled to fulfil any religious duties, that she would not go to confession ; Mrs. Marchand went so far as to tell me that she did not make the prayer in common with the others because her mother had asked so.

21. That is to say, Mrs. Delpit did not practice ?

Yes sir.

22. Do you know if Mrs. Delpit was married before the Catholic Church or before a protestant minister ?

She was married before a protestant minister.

23. Before what minister ?

I was said whom it was, but I don't remember. I heard his name very often. I know he was a protestant minister.

24. What sect did he belong to ?

I do not remember.

25. Do you know the reason why the marriage of Mr. and Mrs. Edouard Delpit was solemnized by a protestant minister ?

Because such was the wish of Mr. Delpit, and he knew what he had to do. He was living at my sister's home ; even, I believe that he indulged in her practices of spiritualism. He has lived at my sister's for many months ; he knew all about it. He was aware of the fact that they had no religion.

26. Had one or the other renounced his or her faith ?

I know nothing about that.

27. How old was Mrs. Delpit at the time of her marriage ?

Sixteen years and two months.

28. Since how long had she quitted the convent where she was educated ?

I cannot say exactly. I know that she has been for a while at Notre-Dame de Pitié, and that she left the place for that reason ; they saw that she had renounced the catholic faith. From there she went at Mrs.

Marchand's and afterwards in a protestant school. She had come out of Notre-Dame de Pitié for a year and a half.

29. In the convent, did she show any evidence of having renounced her religion ?

About the convent, I cannot say.

30. During the time that elapsed between her leaving the convent and her marriage, did you meet her socially. Did you chat with her ?

Ah ! yes, very often. Naturally, she used to come at my house sometimes. I used to go at my sister's, but very seldom ; we did not agree because she had given her faith, and all the family is catholic.

By the Judge.

Q. Did she tell you that she renounced the catholic faith ?

A. I cannot say.

Q. You do not remember if she ever told you so ?

A. No. We remonstrated with her and she answered she did not believe. Naturally, she followed her parents' principles ; her answer was : it is not according to my creed ; I have heard so and so from my parents and they follow the Bible. Such was her answer.

31. Did she recognize before you the fact of being a spiritist ?

Oh ! yes. I saw her myself ; one day as I was at my sister's house, I witnessed a meeting of spiritism. I saw that she indulged in spiritism. That took place previously to her marriage.

32. Do you know if those practices, such as forbidden by the Church, did prevent her of fulfilling her duties as a catholic ?

Yes, and also her husband who had no religion. Both of them were well matched.

33. Were you informed of her marriage ?

Yes.

34. Did you pay her visit in that occasion ?

Yes.

35. Did she tell you that her marriage was solemnized by a protestant minister ?

Yes. I was there on the day that her marriage

took place; I saw that she was married before a protestant minister.

36. Immediately after her marriage did she not behave as a catholic by the fact of going at the catholic meeting, of participating in the public prayers, etc., etc.?

No, not to my knowledge.

37. Have her children been christened?

Yes sir, her children have been christened. I was godmother to the eldest and my young daughter was godmother to the second or the third one.

38. When was her first child born?

He was born in the month of August, I could not say exactly about the date of the month.

39. In what year was it?

Ah, they have been married for the last seven years; I believe, it is in the month of August, 1894.

40. If her first born was christened, that is an evidence that she was then a catholic?

Well, Mr Delpit told me that a civil status was needed, that it was necessary to recognize the child; that is the reason why he was christened. He did not raise any objection to the christening of the child, but that's what he said.

41. Does she claim having renounced her faith?

Well, I cannot say if that is what is termed apostacy; she practised a religion different of the catholic religion. She did not say: I have renounced my faith, but in the meantime she followed another religion.

42. To-day, is she a catholic?

She has received the holy communion at Easter, this year; she was then in my house.

43. Does she fulfil her religious duties?

I cannot say, she has received the communion at Easter of this year.

44. If she was once an apostate, and is now a catholic, when did she give up the protestant errors?

I do not know. From the time of her first communion, she practiced no religion, and this year, to my knowledge, she received the communion for the first time since her first communion.

45. What priest gave her the communion?

She told me that while in Quebec, last year, she was heard in confession by Father Garceau, it is not to

my knowledge, I do not know it. This year, I know as a fact that she was heard in confession by Mr. Girot, of St. James church.

46. Where is the act of her abjuration ?

To my knowledge, I do not know.

47. Do you not believe that she claims of being an apostate in order to secure the validity of her marriage ?

I beg your pardon..... When they started that club of spiritists, they were all excommunicated from the pulpit, all those participating in the proceedings, even those who witnessed the proceedings were excommunicated. Even, when my sister died, my mother had to ask leave to go and see her. They answered to her that she could go and see her daughter.

47. Same question put anew.

Well, I do not think so, because I was very much surprised myself when I was apprised of the fact that she had been heard in confession this year. I suppose she did so because she was living with us at the time. I believe it would have been as hard a task for him to bring her back as for her. He knew all about it : he had been living at my sister's house during many months.

48. Do you know where Mr. and Mrs. Delpit made their wedding trip ?

Well, I believe they had none. I don't recollect well.

49. While in Louiseville, where they went, did not Mrs. Delpit go at the meeting in the catholic church ?

I don't know. I am aware that, some time after their marriage, they went at Louiseville, but I do not know if, while there, Mrs. Delpit went at the meeting in the catholic church.

50. Did she not behave as a catholic ?

No, not to my knowledge.

51. Why, in so short a period did she change and re-change again her religion ?

Because she was with us, and she knows that the whole family is catholic..... Mr. Côté's mother was a protestant, but later she turned catholic. At that time, my brother-in-law was a catholic. My sister died without seeing the priest. She refused to see the priest.

52. Have you anything else to add to your declaration ?

I do not see.....

53. To your knowledge did Mr. Delpit consider his wife as having renounced to the catholic faith ?

Well, I never talked to him about that.

54. He married her as a wife because she had no religion ; he would not have taken her as a wife had she been a catholic ?

I believe that he would not. Judging from the manner in which he used to talk about priests, since I know him. When one has a dog which he calls Pie IX, in order to scandalise every body and that all the family is a witness to the fact that he called his dog by the name of Pie IX : he is wrong in using the religion now, in order to have his marriage annulled. He swore at a crucifix which he kept in his hands. Of this I have been a witness. All of them knew all about it.

55. Why was he himself married before a protestant minister ?

Because he had no religion. I was not much acquainted with him before his marriage.

56. Was it through respect or consideration for his wife he then claimed to be a protestant ?

He liked better being married before a protestant minister. There was a understanding between him and my brother-in-law. At that time they agreed perfectly well if they do not to-day.

57. Did he believed that he was marrying a protestant ?

He knew it well. He knew that she professed no religion, that is to say, that she was not professing the catholic religion. He knew all about it

58. Did he say anything of the kind to anybody to your knowledge ?

No, not to my knowledge, I cannot say.

59. Did he try to bring her back in the catholic faith ?

Oh, never, not that I knew, never.

60. Was he convinced of the validity of his marriage even when solemnized by a protestant minister ?

Certainly, since he was married before a protestant minister. There was a contract of marriage made by a notary, in a word every thing was done according to the usual rules. He believed himself a married man.

61. Why that ?

Because when two people who profess no religion are married by a protestant minister their marriage is usually considered a valid one. That's the reason why he believed in the validity of his marriage.

62. Was he not aware of that law of the Church which renders null the marriage of two catholics when solemnized by a protestant minister?

I do not know; I never heard anything about that.

63. If he was aware of that law, he was then convinced that he was marrying a protestant since till now he believed in the validity of his marriage?

He knew that he was marrying a woman who professed no religion at all.

64. You think that he married her because she professed no religion?

Yes.

By the defensor of the matrimonial lien.

Q. Did Mrs. Delpit ask that her first child be christened in the Catholic Church?

A. I don't believe she did. I was there, at that time and as soon as the child was born, I said, "that child must be christened." I do not recollect that she expressed any such wish.

Q. Do you believe that, at the time of her marriage, Jeanne B. Côté did not only profess the catholic religion, but belonged to the protestant religion?

A. She professed no religion?

Q. Did she adhere to any protestant church?

A. Ah, I cannot say, I never saw her go in a protestant church.

By the Judge.

Q. Are you not in trouble with Mr. Delpit, you or your husband?

A. No.

Q. I mean difficulties about money matters?

A. No; both of them started a trade but it did not succeed and the whole thing was settled amicably. He paid us a visit about 6 or 7 months ago. On the contrary, putting aside that question, my husband and my-

self are obliged to Mr. Delpit for certain services and we admit those favors.

Q. Did your ancestors belong to the protestant religion?

A. Our ancestors, and thence those of Mrs. Allan Côté, my sister, were protestants. My father was baptised in the Catholic Church when ten years of age.

No. 9

TESTIMONY OF JEANNE MARIE BERTHE AURORE CÔTÉ

ON THE 16TH DAY OF APRIL 1900.

I swear upon the Holy Evangelists to tell the truth, the whole truth and nothing but the truth.

1. What is your name and surname?

My name is Marie Berthe Aurore Jeanne Côté.

2. What is your age?

Twenty three years.

3. Where is your actual domicile?

I resided in Quebec during three years. I have been in Montreal for the past six weeks.

4. Are you a Roman Catholic?

I have been a Roman Catholic for a year and a half.

5. Are your parents Catholic?

My parents are not Catholics.

6. Do you practise your religious duties?

I have done so for the past year and a half.

7. You understand the seriousness of the oath you have taken?

I understand the seriousness of the oath I have taken.

8. Are you married?

I am.

9. When were you married?

I was married on the 2d of May 1893.

19. With whom ?

I was married to Edouard Delpit.

11. What was your age then ?

I was sixteen years and two months at the date of my marriage.

12. Had you the consent of your parents ?

Yes, I had the consent of my parents.

13. Have you always been a Catholic ?

I was not always a Catholic.

14. Were you a Catholic at the date of your marriage ?

At the time of my marriage, I was not a Catholic.

15. Did you ever belong to the sect called heretic ?

I belonged to heretical sect, particularly the Unitarian Church.

16. Have you ever taken part in a protestant ceremony with the intention of adhering to it as a member ?

I took part in religious ceremonies of the Unitarian Church with the intention of becoming a member of that Church.

17. Did you ever take part in spiritualism or any other practices of similar nature ? On that occasion did you ever make any renouncement of your faith ?

I took part in spiritualism, but I do not recollect of having made any renouncement of Catholicism. I was then very young.

18. What was Mr. Delpit's age at the time of your marriage ?

Mr. Delpit was 23 years of age at the time of our marriage.

19. Was he then a Catholic ? Was he always one ?

I did not know him to be a Catholic and I, to this day, do not know him to be a Catholic.

20. Did he belong to the heretics ?

Delpit associated himself with the spiritualists. To my knowledge, he did not belong to any religion.

21. Did he ever go to the protestant Church with the intention of becoming a member ?

Delpit went to the protestant Church, but I do not know whether it was his intention to become a member.

22. Did he ever interest himself in spiritualism ? On that occasion did he renounce his faith ?

I know that he was interested in spiritualism,

but I cannot tell that he ever on these occasions renounced his faith.

23. Why did you get married by a Protestant Minister?

I was married by a Protestant Minister because it was the choice of Mr. Delpit.

24. Did you state that you were a Catholic to the Protestant Minister?

I did not declare that I was a Catholic to the Protestant Minister, because all the arrangements of our marriage were made by my father and Mr. Delpit.

25. If he had asked if you were a Catholic would you have stated that you were? Would Mr. Delpit have stated that he was a Catholic?

I could not then state that I was a Catholic, for at that time I was not. As to Mr. Delpit I could not vouch for his reply.

26. Did you consider in being married by a Protestant minister that you had discarded your religion?

I do not consider that my being married by a Protestant minister had any effect upon religious questions. I did not think of these matters, as I considered myself a Protestant.

27. Did you consider your marriage valid?

I considered my marriage valid and I think so now.

28. Did you then know anything about the ecclesiastical impediment of clandestinity?

I did not know anything about it.

29. Do you consent that your marriage be declared void?

I do not wish that my marriage should be declared null.

30. Have you any objection that your marriage should be revalidated, should he be declared null?

I should not have any objection to be remarried, if my marriage was declared null.

31. Do you consider possible a reconciliation with Mr. Delpit?

I would consider it impossible.

32. Since your marriage, have you resided in many domiciles except Quebec and Montreal with the intention of permanently residing there?

Since my marriage, I have not resided outside of

the dioceses of Quebec and Montreal with the intention of permanently residing there.

Interrogated by the defence for the matrimonial tie.

1. Were you baptised and confirmed and have you made your first communion in the Catholic Church.

Yes.

2. In what institution did you receive your education ?

I went to Miss Genereux's school where I was prepared for my first communion by Reverend Abbé Palatin : after which I attended the Congregation Convent on St Jean Baptiste street. Subsequently I went to Mrs. Marchand's Academy where I spent in the neighborhood of three years. From there I attended the French Methodist Institute for two months. Subsequently I returned to Madame Marchand's Academy which I attended for two months. I was married one month after I left Mrs. Marchand's Academy.

3. At what date did you cease to be a Roman Catholic ? What school were you attending at that time ?

I ceased to be a catholic at about twelve years of age. I was, at that time, attending Mrs Marchand's school.

4. When you were at Mrs. Marchand's Academy, were you there considered a catholic ?

No, I was not considered a catholic, and it was for that reason that I left the Sisters of the Congregation.

5. Did you make a solemn declaration that you renounced the catholic faith ?

I did not make any solemn declaration of renouncement of the catholic faith. I was then young, being only 12 years of age, and I followed the faith of my parents which became my own. Even when I was at the convent, I followed the practice of Spiritualism : it was for that reason that I left the Sisters of the Congregation to enter Mrs. Marchand's Academy. From that time, I ceased to practise the Roman catholic religion until one year and a half ago.

6. Did you give notice to any priest that you renounced the catholic faith ?

No.

7. At the Methodist Institute were you considered a protestant ?

Yes. I went to the protestant church with the scholars. During the time that I was there, I followed the exercises of the protestant religion ; instructions of the minister. I did not take the communion, because I was not there when the communion was partaken of on Holy Thursday ; if I had been there I should have taken the communion with the others. I received Bible teachings every sunday. My professor was the Reverend Mr. Massicotte.

8. Since your twelfth year of age did you make any religious devotion at the Catholic Church ?

I may have entered the Catholic Church but I did not perform any religious act. Until within a year and a half I had not confessed since nine years.

9. Do you admit that there is a difference between neglecting one's religious duties and renouncing one's faith ?

Yes. I admit that there is a difference, but as far as I am concerned, as I did not practise my religion I considered this renouncing my faith.

10. Do you consider that at the time of your marriage you not only neglected your religion but renounced it ?

Yes, I am positive and affirm this.

11. A year and a half ago when you returned to the catholic faith, did you solemnly abjure that you were in error in your actions ?

No, I did not make any public declaration that I was in error. I do not know if the priest had seen the bishop to settle my case. As far as I am concerned, I settled that matter before my confessor.

12. Have you anything to add to this deposition ?

No.

Interrogated anew by the defence of the matrimonial tie.

1. At the time of your marriage, did you belong to the Methodist or Unitarian Church ?

At the time of my marriage, I belonged to the Unitarian Church. At the time that I entered Mrs. Marchand's Academy, I ceased to go to the Methodist Church. Mrs. Marchand is a catholic and her school is

a catholic school. When I entered this school there were agreements that I should not take any part in catholic religion.

2. At the time of your marriage, did you express a desire that you should be married before a catholic priest ?

No.

(Signed) JEANNE COTÉ.

Examined anew on the 30th of April 1900.

1. At the Notre-Dame Convent did you practise the catholic religion ?

I did.

2. For what length of time ?

I practised the catholic religion all the time I was there, that is to say one year and a half.

3. You mentioned in your sworn declaration that you left that convent because of your not having been a catholic ; how did you show this abandonment of the catholic faith ? By what actions ?

I did not make any renunciation of the catholic faith. At that time I was too young and I followed my parents' desire who took me from there to place me in another catholic institution, Mrs. Marchand's Academy, to have the liberty of not practising the catholic religion because they had abandoned their belief of it.

4. Had you any difficulty with the nuns on that subject ? What difficulty ?

I do not recollect having had any difficulty with the nuns on this subject.

5. Where you looked upon by the nuns or the other scholars as one having abandonned the catholic faith ?

Many of the scholars considered that I did not practise the catholic faith but not the nuns.

6. Did they at any time say that you were a protestant ?

I do not know.

7. Who are the nuns who could prove that you then stated that you were a protestant ?

I do not know.

8. At Mrs. Marchand's were you generally known as one who did not belong to the catholic religion ?

At Mrs. Marchand I was generally known as one not belonging to the catholic faith.

9. What arrangements were made between your father and Mrs. Marchand relative to your practising of religion in her school?

The arrangements between my father and Mrs. Marchand were that I should entirely occupy my attention to studies and not to religious matters.

10. Why did you attend the methodist college for such a short time?

I left the methodist institution because of the food.

11. Why did you return to a catholic school like Mrs. Marchand's?

Because at Mrs. Marchand's school I had free liberty not to practise any religion and also because the school was near our home.

12. Was this conduct not looked upon as if you were returning to your first belief?

My return to Mrs. Marchand's was not an evidence that I was going back to my original faith.

13. At Louiseville, to which place you made your wedding trip, did you not attend a catholic church there and follow the religious ceremony not only for curiosity's sake but sincerely as a catholic?

At Louiseville I attended the catholic church not as one having faith in it but through politeness for those with whom we were visiting.

14. With whom were you visiting at Louiseville?

We visited Gabriel Moise Caron, who was a friend of my husband.

15. At the time of your marriage, did you consider Mr. Delpit a catholic?

At the time of my marriage I did not consider Mr. Delpit a catholic.

16. Did he state that he was a protestant or not a catholic and at the same time not conforming to any religious creed?

I never heard him speak of his religious belief.

17. You do not, even now, know Mr. Delpit to be a catholic?

I do not even now.

18. Do you mean to state by this that he does not

practise the catholic faith or that he left the catholic faith?

I never saw him practise the catholic faith. He must have ceased to be a catholic for many years.

19. The first year of your marriage both of you considered yourselves protestants?

I considered myself a protestant during the first year of my marriage. As to him, I do not think that he believed in any religion.

20. Were your children baptized?

My children were baptized.

21. How many years after your marriage was it before your first child was born?

My first child was born fourteen months after my marriage.

22. Was he baptized in the catholic church long after his birth?

My first child was baptized in the catholic church three days after his birth.

23. How was it that you had that child baptized so soon after he was born when both of you pretended to be protestants?

I had my child baptised in the catholic church to make it legitimate. That is what my husband told me. It was at the request of my aunt, Mrs. Derome, that I allowed my child to be baptized in the Catholic Church. I do not recollect my having expressed the desire to have him baptized in the Catholic Church.

24. When did you renounce the protestant faith?

Eighteen months ago I renounced the protestant religion.

25. With the permission of what bishop?

I do not know that a bishop intervened. All passed through the confessional.

26. Through what priest?

It was the Reverend Father Garceau who settled the whole matter at the confessional.

27. If you did not make such a renouncement, was it because you did not believe that you had formally abandoned the catholic faith?

All that I can answer to this question is that I thought I was abandoning the catholic religion.

28. Sincerely and under your oath, did you ever cease to be a catholic ?

Yes, under my oath I declare that at one time, I ceased to be a catholic.

29. If a census had been taken, would you have been registered as a protestant or a catholic ?

At the time of my marriage, if a census had been taken, I would have been registered, at my request, as a protestant.

30. At the death of your mother were her remains taken to a church, and which ?

At the death of my mother, her remains were not taken to any church. She was buried in the protestant cemetery.

31. Did your family try to have her remains taken to the catholic cemetery ?

The question of taking her remains to the catholic cemetery was never discussed.

32. The priests who visited you, did they not express the necessity for you to renounce the errors that you pretended to have professed and to make a declaration of profession of faith in the Catholic Church ?

The priests who visited our family endeavoured to convert my mother who was in danger of death, but I cannot tell if there was a question of renouncement. As to me they did not make an endeavour to have a renouncement from me nor to convert me. Amongst the priests who endeavoured to convert my mother, the only one I can recollect was l'abbé Marre.

When I returned to the catholic faith eighteen months ago, it was not the priest but pious friends who persuaded me.

Examined by the defence on behalf of the matrimonial tie.

Q. Did you renounce the protestant errors eighteen months ago ?

A. I have already answered that question when I said that I had settled that question at the confessional.

No. 10

TESTIMONY OF REV. LEOPOLD MASSICOTTE

ON THE 7TH DAY OF MAY, 1900.

Q. Do you swear on the Holy Evangelists, to tell the truth, the whole truth and nothing but the truth?

A. Yes, sir.

Q. Please tell us your name, surname, age, place of residence, your occupation and religion?

A. My name is Leopold Massicotte; I am 33 years of age and I live at No. 1 St Elizabeth St.

Q. Your occupation?

A. Minister.

Q. Your religion?

A. Methodist.

Q. Do you know Mrs. Edouard Delpit, born Jeanne B. Côté, if so, since when?

A. I knew her very well since about 1890. I made her acquaintance later on in 1893, at the Methodist Institute. In 1890, I attended a meeting of spiritualists held by Mr. Côté; it is at that time that I made the acquaintance of the family, and afterwards I knew the little girl as a scholar of the Institute in 1893.

Q. Are you aware that Jeanne B. Côté frequented a methodist school in Montreal? If so, when and how long?

A. She attended the methodist Institute at least one year. I am sure of it, in 1893, perhaps two years. In 1893 she was registered as a scholar of the Institute, on Green Avenue, Westmount.

Q. Were you a teacher of Jeanne B Côté?

A. Yes, sir.

Q. Was Jeanne B. Côté looked upon then as belonging to the methodist Church and why?

A. Not necessarily as belonging to the methodist Church, but we looked upon her as a protestant, and here are the reasons why.

On the demand for the admission, her parents had written in answer to the questions (there are 7 or 8 questions) "What Church do you belong to?" They made the

following answer: "Spiritualist, formerly catholic". Then, the director and myself concluded that the parents being formerly catholics and then spiritualists had the intention to educate their child in the protestant Church because they were intrusting with us the care of the child; that they were willing that we give her a protestant education, and we looked upon her as a protestant. As far as I know, she never joined us as a methodist. I am not aware that she partook the communion with us. She was treated as one of our own as being a protestant. The demand for admittance is still at the college and I saw lately the director concerning this matter.

Q. Has Jeanne B. Côté ever made any formal action by which she renounced the catholic faith when she was at your institute?

A. Not in our college; but she followed all the religious exercises, and the demand for admittance declared that she was not a catholic.

Q. Has Jeanne B. Côté been received as a member of the methodist Church? If so, when, by whom and what action did she make showing that fact?

A. I do not believe that she ever joined our church. It is possible but I do not know it.

Q. At the time of her marriage with Edouard Delpit, in 1893, did Jeanne B. Côté belong to the methodist Church?

A. I do not know.

Q. Why was she married before the unitarian Church? Did she then belong to that Church?

A. I do not know. I only learned recently that she was married; I did not see her since that time.

Q. Could you say why Jeanne B. Côté left so soon the methodist school?

A. She left the Institute at the end of the scholar year. The Institute closes its doors at the end of April, then all the scholars leaves for home.

Q. The fact being that Jeanne B. Côté was married before the unitarian Church, that she had her children in the catholic religion, don't you doubt the sincerity of her adherence to the methodist Church?

A. There has been no adherence to the methodist Church on her part. I cannot account for it. The fact

that she was married by a protestant minister of the unitarian Church does not amount to much for me. I do the same thing very often; nearly every month I am called upon by catholics to marry them. I don't ask them if they are catholics or not. As I have already stated, we looked upon her as one of our own, because the request for admittance declared that she was (spiritualist formerly a catholic). In our institution, the scholars are classified according to their creed; we concluded--and I said so to the director--that if the parents intrusted with us the care of their daughter, they wanted us to educate her in the protestant faith, and we classified her amongst the protestant scholars.

Q. Have you anything to add to your testimony?

A. Nothing.

(Signed)

LEOPOLD MASSICOTTE.

No. 11

TESTIMONY OF MALVINA LEMIRE-MARCHAND

ON THE 7TH DAY OF MAY, 1900.

1. Swear you on the Holy Evangelists to tell the truth, all the truth, and nothing but the truth?

A. Yes, sir.

2. Please tell us your name and surname, your age, the place of your residence, your religion?

A. Malvina Lemire Marchand, widow of Mederic Marchand.

Q. Your age?

A. Fifty seven years.

Q. Your occupation?

A. Director of Mrs. Marchand's Academy, 62 St. Hubert St.

Q. Your religion?

A. Catholic.

3. Do you know Jeanne B. Côté, daughter of Allan Bernard Côté, wife of Edouard Despit?

Yes, sir.

4. Did she follow a course of studies at your Academy? If so, when and how long?

Well, I cannot exactly state when and how long. She attended my school for about two years and a half. I cannot say in what year it was.

Q. Was it long before her marriage?

A. No, she was married a few weeks after she left my school.

Q. She attended your school some weeks previous to her marriage?

A. Yes sir.

Q. For how long about?

I know that she attended my school for two years and a half. I do not know if it was for two years completely. Let us say that she was a pupil at my school for about 15 or 16 months.

5. When Jeanne B. Côté attended your Academy, did you pay any particular attention to her concerning her religious duties?

Her mother called and told me that she did not want any religious duties for her. No confession, no prayer before or after classes, not even Holy History, in fine nothing at all; that she did not bring her up according to the catholic faith; that they had their own creed; that they were spiritualists. She told me not to take any care about her religious belief. Two of my teachers can say the same thing. The same prohibition was extended to Miss Bibault who paid a visit to her home. She never knelt down not even before or after classes. She never attended the monthly confession. Her mother came and gave me her instructions in my own drawing-room.

Q. And the young girl?

A. The mother came to me, Miss Beaudoin who was her teacher can state the same thing.

6. Did she follow the religious teaching and other religious ceremonies as is usual for the catholic pupils of your Academy?

No sir. Nothing at all.

7. Did Mr. Côté make any remark concerning the religious duties of his daughter?

No. Not Mr. Côté, I do not know Mr. Côté. I never saw him. It is Mrs. Côté who came and saw me.

8. Did the young girl agree willingly with the orders of her father (or her mother) concerning this matter?

She never asked me to be allowed to follow a religious teachings. Furthermore she never told : I would like to follow the religious teachings. I believe that she was entirely indifferent. So much so owing to the fact that she was not very intelligent and that she never paid much attention to what she was doing. That is to say that her mind was not much developed.

9. Did she sometimes give to understand that she had not renounced the catholic faith?

I cannot say anything of the kind. She was a very quiet young girl. She would not try to influence others to my knowledge. She would not have been allowed to remain with us had we thought that she could influence our other pupils. She was very indifferent, very quiet. It is hard to say whether she made us understand that she had renounced the catholic faith as long as she did nothing at all and followed no religious exercises.

10. To your knowledge did she perform any religious duties, for instance, did she attend to confession?

No sir.

11. To your knowledge did she do anything showing her having renounced the catholic faith?

I cannot say anything about that, neither for nor contra. For I believe the child bore her parents' influence. She was not much developed mentally : she was in our academy in the fourth year course, that is to say in verbs and participals, and she was the last one among forty pupils.

12. Do you consider that she was a catholic or a non-catholic? On what ground do you rely to form an opinion?

I have no opinion on the matter. I could not say she was a catholic; I rather thought that she followed the religion of her mother. I never thought she belonged to our religion.

Q. You thought she belonged to a protestant sect?

A. I know well that she was indulging her religious duties at home. Her mother told me so. She said to me that she wanted nobody to interfere with the reli-

gious education of her child, that every thing was done at home, that they had meetings. I do not know what kind of religious sect it was.

13. Have you anything to add to your testimony ?
No sir.

By the Attorney for the matrimonial tie.

Q. Did she not tell you that not only was she not a catholic but belonged to a protestant sect ?

A. No. If she said so to me I don't recollect it. It seems to me that she did not.

(Signed) MALVINA LEMIRE-MARCHAND.

No. 12

TESTIMONY OF MARGARET CAMPBELL

ON THE 2ND DAY OF MAY 1900.

1. What are your name, surname, age, and the place of your residence ?

My name is Margaret Campbell; I am 50 years old. At the present time I am living in Quebec.

2. What religion do you belong to ? Have you always been a catholic ? Are you still a catholic ?

I am a catholic

3. You know the importance of the oath under which you are ?

Yes.

4. Do you belong to a family which has always been catholic ?

I belong to a family which has always been catholic.

5. Did you always live in Quebec ? If not, where were you living before ? Since when are you in Quebec ?

I was born in Levis and I have lived 8 or 10 years

in Montreal. I am living in Quebec since the month of July of last year.

6. Are you a sister to Mrs. Côté, Mrs. Delpit's wife, born Jeanne Berthe Aurore Côté?

Yes.

7. You are well acquainted with the family of Mr. Côté, your brother-in-law? Since how long?

I am acquainted with Mr. Côté's family since 1874.

All the members of Mr. Côté's family are catholics. Mrs. Côté, mother of Mr. A. B. Côté, turned a catholic at the time of her marriage.

8. Is it a family presently catholic? Has it always been so? If not, when took place the change of religion? What were the reasons and the particulars for that change?

M. A. B. Côté do not profess the catholic faith, but I am not aware that there was any apostacy. About ten years ago he abandoned the practice of the catholic religion and became a spiritist. He asserts himself as a catholic but will accept neither priest nor confession.

9. Has not that family always been reputed a catholic one?

The family of Mr. A. B. Côté has always been reputed catholic, although they followed him in his practices of spiritism.

10. Are you acquainted personally with Mr. Côté? Do you think he is able to say, under oath, by interest or for any other reason, things which he knows untrue?

I know Mr. Côté personally and I do not believe him able of saying under oath things which he knows to be untrue.

11. You know well Mrs. Delpit, born Jeanne B. A. Côté? Since what time?

I am acquainted with Mrs. Delpit from the time of her birth.

12. Do you believe her able of asserting under oath, to serve her interests or for some other reasons, facts which are not true?

No.

13. Has she been brought up in the catholic religion?

She has made her first communion, but after that she did not practise any more.

14. Were all the schools where she was a student, catholic ones ?

She was a student at the convent of the Congregation and afterwards she spent a year in the protestant college of Westmount.

15. Do you know the reason why she left the Sisters' convent ?

She left the convent of the Congregation because her father and her mother wanted her to go in a protestant school. I do not believe it was on account of her ideas against the catholic religion.

16. Did she not change her religion ?

She did not change her religion but only abandoned the practice of it.

17. Did she not go at the protestant meetings with the intention of accepting the creed of that church ?

I do not know if she went at the protestant meetings with the intention of adhering to protestantism. She wore the colors of the Holy Virgin at the time of her marriage.

18. Was she married before a protestant minister ? Why ?

Her marriage was solemnized by a protestant minister, I suppose it was in order not to go to confession before the marriage.

19. At that time did she go to the catholic church ? Did she profess catholicism ? And what about her family ?

At the time, I do not know as a fact that she used to visit the catholic church. She prayed like other catholics with this difference that she would not go to confession ; it was the same thing with her father and her mother.

20. After her marriage did she profess the catholic religion ? Did she hear the mass ? Did she keep in her house, in her room, anything that could let you know what was her religion ?

After her marriage she did not practise more during the first year ; she did not go to mass any more during the same year, she had in her house a crucifix, pictures representing the Holy Virgin, St. Joseph, etc

21. Have her children been baptized ? Was it at her

request or at her husband's request ? Who stood as godfather and as godmother ?

All her children were baptized in the Catholic Church. Her first child was born about a year after her marriage and she had him baptized immediately. I still consider her as being catholic at heart and in her mind. It is one of my sisters, Mrs. Delpit's aunt, who first spoke of having the child baptized and the father and mother agreed right away. The god father to the first child was his grandfather Côté and the godmother was Mrs. Derome, aunt to Mrs. Delpit.

22. Mr. Côté must have been reputed a catholic since nobody objected to his standing as godfather ?

Yes.

23. Since the birth of her first child has Mrs. Delpit practised the catholic or the protestant religion ? Give particulars if possible.

Since her first child's birth she practised no religion at all. However, some times she would go at the catholic church, would cross herself, would kneel down before the altar and pray like other people ; I remember that she came to church four or five times with me. She never said to me that she had quitted the religion. I look at her merely as a catholic who has neglected to perform the duties of her religion. If she had renounced the catholic faith she would have told me so most certainly. She never laughed at or gested at the catholic religion. To me it would seem a calumny to say that she has been a protestant. She never expressed before me the grief of having had her marriage solemnized by a protestant minister. I never saw her children performing any religious exercises. I do not believe that she intended to make protestants of her children.

24. Mr. Côté was married a second time, was he not ?

Yes.

25. His second wife does belong to the catholic religion ?

Yes.

26. Was this marriage solemnized by a catholic priest ? What was his name ? Was this marriage looked upon as a mixed marriage ?

This marriage was solemnized by a catholic priest in Notre Dame church, of Montreal. Before its solemn-

ization Mr. Côté went to confession, so that it was a marriage between two catholics. In Montreal. M. Côté is looked upon as a non-practising catholic, but is not reputed a protestant

27. Your sister, Mr. Côté's first wife, was buried in a protestant burying-ground? She must then have been a protestant?

The first wife of Mr. Côté was buried in a protestant cemetery because she refused to see the priest before her death. Her mind had been troubled by her practices of Spiritism. The four last years of her life she made extraordinary penances, such as keeping off the social world, going no more at the theatre, refusing to her child the permission to go out, praying very much and claiming all the time to have remained a catholic.

28. Did any body object to such a burial? Did Mrs. Delpit, for one, raise any objection. Was that burial in accordance with Mr. Côté's wish?

Nobody was opposed against a burial in a protestant ground. Mr. Côté was in favor of a burial in a protestant burying ground.

29. Was anything done in order to have Mrs. Côté buried in a catholic ground? If so, by whom?

The Côté family did not try to have Mrs. Côté buried in a catholic ground.

30. You know well Mr. Delpit, husband of Miss J. B. Côté? Since how long ago?

I am well acquainted with Mr. Delpit, from the time of his marriage.

31. Did you always know him as a catholic? Generally was he reputed such?

I never saw him performing any religious duty, but at the time of his marriage I heard that he was a catholic and his marriage with my niece was looked upon as a marriage between catholics solemnized by a protestant minister. Such was the opinion prevailing among all the members of my family.

32. Are you aware if it is he who asked to have his marriage solemnized by a protestant minister?

No. I do not know.

33. Is he still a catholic?

Mr. Delpit is a catholic as he used to be previous

to his marriage ; he does not perform his religious duties more to-day than he used to do.

34. In your estimation, do you believe, that by interest or for some other reason, he might, while under oath, make a statement, knowing that statement to be false ?

I always had much confidence in him ; I don't think him able of doing so.

Ex officio.

1. You assert positively that Mrs. Delpit behaved as a catholic but did not practise.

I always looked upon her as a catholic. She never renounced her faith. Before her marriage she was estranged from the religion only by her practices of Spiritism. When she was a young girl she always had a rosary.

2. Do you believe in the assertion that was made that before her marriage, she was a protestant ?

No, because she used to pray the Holy Virgin and the Saints. I never heard of her adhesion to any protestant sect. I am not aware and did not hear that in her case any abjuration has been made.

3. Do you know the reason why this Côté family did not go to confession ?

They did not believe in the confession made to the priest ; they confessed to God.

The said declaration having been read to the witness he declares having nothing else to add and has signed.

(Signed) MARGUERITE CAMPBELL.

No. 13

TESTIMONY OF MRS. GABRIEL MOISE CARON.

ON THE 5TH DAY OF MAY 1900.

1. What are your name, surname, occupation, age and residence?

My name is Mrs. Gabriel Moise Caron, born Anastasie Caron, of Louiseville. I am 47 years of age.

2. You are a catholic attending your religious duties?

I am.

3. You know the importance of the oath you have just taken?

I do.

4. You know Mr. and Mrs. Delpit? Since when?

I know Mr. and Mrs. Delpit since their marriage. On that occasion they spent two months with us.

5. Do you believe that Mr. Delpit can say under oath something that he know to be untrue by personal interest or any other motive?

Up to the present time we have had confidence in him. I think he is frank and unable to swear what is untrue.

6. And as regards Mrs. Delpit?

I have less confidence in Mrs. Delpit. We found her to be childish. I would not believe her even under oath.

7. What was their religion? Before and after their marriage? Were they catholics or protestants? Did they both practise their religion? Please state all the particulars?

On their first visit at our home her clothes were white and blue and she told us that her mother had her consecrated to the Holy Virgin from the age of three years to the time of her marriage. All her clothes were white and blue, excepting those that her husband had just bought for her marriage. We never doubted that she was a catholic before and at the time of her marriage. The whole of her conversations was on religious topics,

on what took place in the convent at the time of her first communion, and so forth. She let us understand that she had been married in the private chapel of the Archbishop of Montreal.

During her stay at our place she attended mass every Sunday. She had her own prayer-book; in her room she had many prayers joined together. She had also a rosary and the prayer. If she ever said a word against the religion it was rather to please her husband who did not practise. As to Mr. Delpit he always said that he was a catholic. But he did not practise his religion. He attended mass, however, on Sundays. He boasted of being indifferent on religious matters.

8. Mr. and Mrs. Delpit made their wedding trip at your place?

They came to our place two months after their marriage.

9. During all that time, did they behave as catholics or protestants? Did you believe them to be or were they reputed to be catholics or protestants?

During all that time, Mrs. Delpit behaved herself as a catholic. As to Delpit I did not follow him so closely. I always thought them to be both catholics. But as to Mr. Delpit I thought that his faith was diminished. Among her clothes, in her trunks, there were many religious books and pictures of St. Christopher. I must say that I knew Mr. Delpit previous to his marriage and Mrs. Delpit only after her marriage.

10. Did they attend the catholic church? Please give as many particulars as you can?

I have already answered that, both of them performed religious duties that are proper to catholics only.

11. Did you have any knowledge that at the house they have said their evening prayers and recited the rosary, etc.?

I have already answered this question.

12. Did they ever speak confidentially about their youth, their education, their religion, their courtship?

Delpit told me about a month after he came to our place that one could be saved when professing a religion other than the catholic religion. But it was, I believe, in the way of teasing us and for the sake of discussion.

As to Mrs. Delpit, she never gave us the occasion to doubt of her being a catholic.

13. Did they ever tell you that their marriage was solemnized by a protestant minister, and did they give you the reason why?

They never told us that their marriage was solemnized by a protestant minister. Mrs. Delpit told us that they had been married at the Archbishop's palace by a catholic priest. I heard of their marriage before a protestant minister those last days of May.

14. How long did they stay at your place?

Two months.

15. Did you see them again since their wedding trip? If so, is there anything in their behavior which could show what was their religion?

I saw them again since their wedding trip almost every year. In these different circumstances Mrs. Delpit never led us to believe that she was not a catholic. Her husband was always the same. He did not practise his religion. She said herself that during the first years of her marriage, she went to confession, in Montreal. She had her confessor, whose name I do not know. In one of her trips, she taught her first child to recite prayers. She made him pray for the conversion of his father. We gave her many sacred things that she kept preciousy.

16. Did you know the Côté family before the marriage of her daughter Jeanne B. A. Côté? If so, was she considered as a protestant family?

I did not know the Côté family, but one of my brothers-in-law and the parish priest Tessier knew it. They told me that formally that family was reputed a very good family. I have no particulars to give about that family during the last years. At the death of Mrs. Delpit's mother I tried to know the place where she was buried. I never could know it. I put that question because I heard that she professed spiritism.

Ex officio.

17. Do you consider the marriage contracted by Mr. and Mrs. Delpit as the marriage of two catholics before a protestant minister?

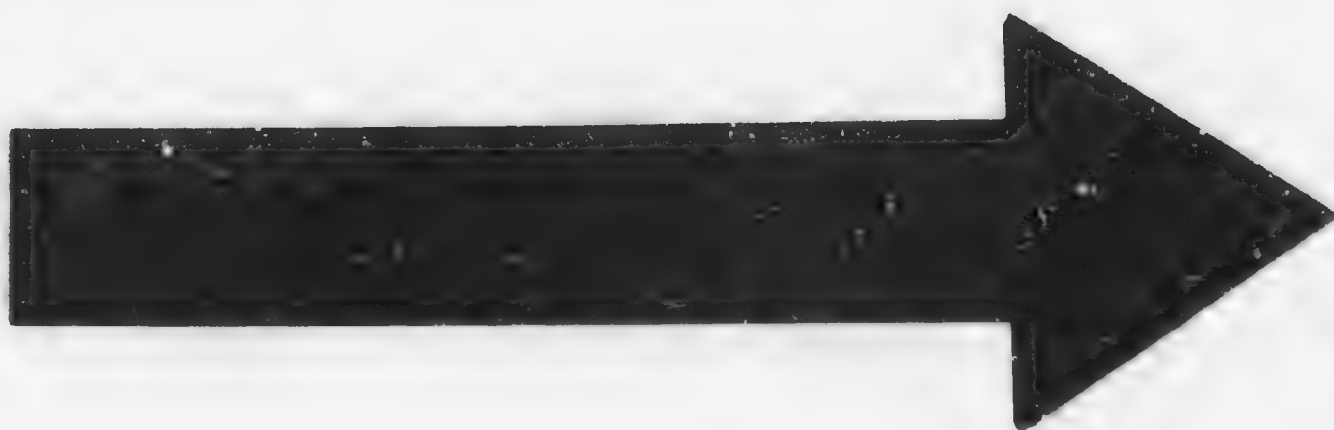
I never thought the Delpit marriage could have

been solemnized by a protestant minister. I hardly believed it when I heard it. My opinion is that Mr. and Mrs. Delpit were both reputed catholics by all who knew them. I think that, generally, their marriage will be considered as such, that is to say as the marriage of two catholics solemnized by a protestant minister. For my part, Mrs. Delpit has always been a catholic from her youth... She left me under the impression that her parents were catholics. She was 16 years of age when she was married. At the time of her marriage she left me under the impression that she was a perfect catholic. I would not believe her would she say that at the time of her marriage she was not a catholic. I see no reason why she would not tell us the truth concerning her religious convictions of that time. If, at that time, she had professed any ideas contrary to the catholic faith, she would have let us know it; her character is open, childish and communicative. She used to tell all what came through her mind, good or bad; she talked with young girls that were pupils at the convent. She was a student at the convent of the Sisters of the Congregation. She also attended a school of a lady hired by the Sisters of the Congregation. I consider their marriage, that is to say the marriage of Mr. and Mrs. Delpit, as null and void, because they were two catholics married by a protestant minister.

Three years ago, my daughter went on a visit to Mrs. Delpit; she sometimes said prayers with them and she had her child pray. My young daughter remarked that she prayed in the absence of her husband, and had the prayer said by her children. She told my daughters that she did not expect her husband consenting to the christening of her children, and that she was agreeably surprised when she heard her husband admit that the children ought to be baptized.

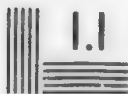
I have nothing more to add.

(Signed) MRS. GABRIEL MOISE CARON.



MICROCOPY RESOLUTION TEST CHART

ANSI #1 TEST CHART



2.8

2.5

2.2

2.2



1.0 1.1 1.25 1.4 1.6 1.8 2.0 2.2 2.5 2.8

Quebec, 17th day of March, 1900.

TO HIS LORDSHIP L. N. PEGIN,

Archbishop of Quebec,

Quebec.

My Lord,

I have the honor to respectfully submit to your Lordship the following facts: I am a roman catholic, belonging to a Roman catholic family; born at Beaumont-du-Perigord, department of Dordogne, France, on the 12th day of May, 1870. I was baptized there, on the 19th of May 1870; I made my first communion on the 21st of June 1880 at Sarlat, department of Dordogne, at the Jesuit Fathers' College of whom I was a pupil. I came to Canada in 1888 and since 1890 I have always lived in the province of Quebec; I reside in the city of Quebec since 1894.

On the second day of May 1893, I was married in Montreal by the Reverend William S. Barnes, minister of the Church of the Messiah (unitarian church) to Marie Berthe Aurore Jeanne Côté, who belonged as I do to the Roman Catholic Church. She was born in Montreal, on the 7th day of March 1877, has been baptized there on the 9th of March 1877 in the parish church of St. Vincent de Paul, has made her first communion and has been confirmed in St. James church, in the same city, on the 24th of May, 1888.

Considering that two Roman catholics cannot be married but by a Roman catholic priest, and according to the rules of the Roman Catholic Church, I respectfully request Your Lordship to declare the nullity of that marriage. I inclose in the above petition the following documents:

1. My certificate of birth duly legalized;
2. The certificate of birth of Marie Aurore Côté, who on being confirmed, added to her surname the name of Jeanne;
3. The certificate of marriage delivered on the 2nd day

of May, 1893, by the Revd. William S. Barnes, minister of the Unitarian Church.

I have the honor to be, Your Lordship, with the most profound respect, of Your Lordship,

The most humble servant.

E. DELPIT.

ANSWER TO THE PETITION OF MR. EDOUARD
DELPIT.

TO HIS LORDSHIP MGR L. N. BEGIN,

Archbishop of Quebec.

My Lord,

In answer to the petition made by Mr. Edouard Delpit, civil employee, of the city of Quebec, on the 17th day of March 1900, asking that his marriage with Marie Berthe Aurore Jeanne Côté be declared null and void, she has the honor to submit to Your Lordship the following facts :

1. At the time of the marriage of Marie Berthe Aurore Jeanne Côté with Edouard Delpit, the said Delpit did not practise any religion whatever, or at least frequented as such in the family of Marie Berthe Aurore Jeanne Côté, and that as a matter of fact, at the personal knowledge of the said Marie Berthe Aurore Jeanne Côté, the said Edouard Delpit did not practise any religion whatever.

2. The father and mother of the said Marie Berthe Côté, long before the said marriage and at the time of its solemnization, did not belong to the Roman Catholic Church ;

3. That as a fact the father of the said Marie Jeanne Berthe Aurore Côté, and her mother, did not profess the Roman catholic religion, her mother dying without the

last rites of the Church and the father not being then and even now a member of that Church ;

4. That it was agreed between the said Edouard Delpit, who then took the quality of a non catholic, and the parents of the said Marie Jeanne Berthe Aurore Côté and this one herself, that the marriage would be solemnized before the unitarian church which was more in accordance with the creed of the parties

Montreal, 7th April 1900.

JEANNE BERTHE COTÉ.

ECCLESIASTICAL SENTENCE.

In the name of Our Lord, Amen.

On the twelfth day of July nineteen hundred, in the archiepiscopal palace of Quebec, number 2 Port-Dauphin street, we the undersigned Cyrille Alfred Marois, Prothonotary Apostolic, Vicar General of Quebec Diocese, Official, Judge delegate for matrimonial cases by letters of His Lordship the most Illustrious and the most Reverend Louis-Nazaire Bégin, archbishop of Quebec, dated the Twentieth day of April eighteen hundred and ninety-eight ;

Seeing the petition of Mr. Edouard Delpit, of Quebec, dated on the seventeenth day of March 1900, praying that his marriage with Mrs. Marie Berthe Aurore Jeanne Côté be declared null and invalid on the ground of clandestinity ; whereas Mr. Edouard Delpit and Mrs Jeanne Côté have contracted marriage on the second day of May 1893 before a protestant minister, the Reverend William S. Barnes, against the laws of the Catholic Church in the city and the diocese of Montreal where the decree "tametsi" of the Council of Trente forbidding clandestine marriages on the pain of nullity has been promulgated and is in force ;

Seeing the decree of the Council of Trente, section 24, chapter 1 "tametsi" "Reform concerning marriage"

by which the said impediment of clandestinity renders null a marriage provided it is proved ;

Seeing the assignation of interested parties, the said Edouard Delpit and the said M. B. A. Jeanne Côté, to appear for the instruction of the present cause ; having heard their respective avowal and examine witnesses called by the parties themselves and by the Court ;

Seeing and considering seriously all and every exhibits relative to the present cause judiciary or extra-judiciary with the remarks of the Defensor of the matrimonial bond, opinions of the theologian and canonist consulted :

Whereas the Plaintiff has been born of Catholic parentage the twelfth May 1870 having been baptised the nineteenth of the same month, having been brought up in the catholic faith, having made his first communion on the twenty-first day of June 1880 in the chapel of Reverend Fathers Jesuits, at Sarlat, in the diocese of Périgueux, in France ;

Whereas the said Plaintiff Edouard Delpit has never adhered to any protestant sect whatever, never declared that he was no more catholic although he had neglected to fulfil the duties prescribed by his religious faith ; but on the contrary he assumes having always been a catholic at heart and by will ;

Whereas at the time of his marriage the said Edouard Delpit was commonly known as a catholic as it appears by several witnesses heard in this cause ;

Whereas on the other side Mrs. M. B. A. Jeanne Côté, born the seventh day of March 1877, baptised the ninth of the same month, brought up in the catholic faith, having made her first communion and being confirmed on the 24th of March 1888, has been married on the second day of May 1893 before a protestant minister without having formally and openly renounced the catholic faith as it appears by her own evidence before the Court and particularly by the declaration of Miss Margaret Campbell, maternal aunt of the defendant, of Mrs. Anastasie Caron and of Reverend Mr. Claude Emile Perrin, priest ;

Whereas the said M. B. A. Jeanne Côté abandoned the practice of her religion rather than renounced it by reason of her intelligence not being much developed,

of her tender age, of spiritualist practices and of her mother's influence who, according to her family's opinion, was exalted by spiritualist practices ;

Whereas it appears by many evidences that the said Mrs. M. B. A. Jeanne Côté belongs to a family which has always been reputed catholic, although it was known as practising spiritualism :

Whereas the said Mrs. M. B. A. Jeanne Côté has not really renounced her faith outwardly, has not changed her religion and has always been considered a catholic showing that she was a catholic, even at the time of her marriage, by the accomplishment of many pious exercises proper to catholics such as frequentation of catholic church, recitation of Holy Virgin beads and recitation of many particular prayers which she much esteemed;

Whereas the defendant in this cause has declared that she had been married before a protestant minister because Mr. Edouard Delpit had himself made that choice without her participation ;

Whereas the said Mrs. M. B. A. Jeanne Côté has assumed that she had practised spiritualism without remembering that she had the intention to renounce her faith in such occurrence :

Whereas the said Mrs. M. B. A. Jeanne Côté has been able to resume her catholic religious practices without having to do a profession of catholic faith and without abjuring any error :

Whereas Mrs. M. B. A. Jeanne Côté's father has been married in 1894 with a catholic, in the catholic church, without having obtained nor asked a license for a mixt marriage, declaring himself a catholic by this action ;

Whereas the said Mrs. M. B. A. Jeanne Côté has permitted her children to be baptised in the catholic church without any protestation, having on the contrary manifested her happiness that her husband had consented to their baptism by a catholic priest :

Having heard the Reverend M. Joseph-Edouard Feuiltaut, cure of Ste-Marie de Beauce, Doctor in Ecclesiastical Law, Defensor of the lien in the present cause Delpit-Côté, the said Defensor having nothing to add as he has declared :

After having seriously and carefully examined the

question, wishing only to please God, in the presence of the Reverend J. E. Feultault, defensor of the marriage, of the Reverend Jules-Clovis Arsenault, Notary, Chancellor of the Officiality: the parties having been notified, Mr. Ed. Delpit by a letter dated the tenth of the present month and Mrs. M. B. A. Jeanne Côté by a letter dated the Ninth of the same month of July; being present.

MM. CHARLES LANGELIER AND
ALBERT MALOUIN,

Advocates of the parties.

We pronounce and declare the marriage contracted by Mr. Edouard Delpit and Mrs. Marie Berthe Aurore Jeanne Côté, in the city of Montreal, the second day of the month of May eighteen hundred and ninety-three, null and invalid on the ground of "clandestinity" and we pronounce this sentence at Quebec, the twelfth day of July nineteen hundred.

(Signed) C. A. MAROIS, V. G.

Judge.

J. C. ARSENAULT,

Priest, Actuary.

CERTIFICATE OF LIBERTY

Louis Nazaire Bégin, Archbishop of Quebec.

To all those whom it may concern, be it known that seeing:

1. The sentence rendered on the twelfth of July last by the Official of this diocese and declaring null and invalid, on the ground of "clandestinity", the marriage contracted by M. Edouard Delpit with Mrs. Marie Berthe Aurore Jeanne Côté, in the city of Montreal, on the second day of May 1893:

2. The appeal to the Holy See made on the same day by Reverend Mr. Joseph Édouard Feultault, Doctor in

Ecclesiastical Law and Defensor of the matrimonial tie in the same cause :

3. The letter dated november the 23rd of the present year, protocole No. 41371 of his Eminence the Cardinal M. Lodochowski, Prefect of the Sacred Congregation of the Propaganda by which it appears that the Holy See notwithstanding the appeal made by the Defensor of the lien, judges that there is no reason to pronounce a second sentence in the cause Delpit-Côté and there only remains to deliver a certificate of liberty to the party who has invoked the nullity of the marriage before the Officiality of Quebec ;

Therefore, We declare that according to the judgment rendered by Our Official on the 12th of July 1900 Mr. Edouard Delpit and consequently his consort, Mrs. Marie Aurore Berthe Jeanne Côté, are free of all matrimonial tie and can, if they think it proper, contract a second marriage.

In witness whereof, We have delivered the present declaration at Quebec in Our episcopal Palace on the tenth day of December 1900 and have ordered that it be transmitted immediately to both interested parties.

Given at Quebec, under our sign, the seal of the Archdiocese and the counter-sign of Our secretary, the tenth of December nineteen hundred.

(Signed) L. N. ARCHBISHOP OF QUEBEC.

PLAINTIFF'S DECLARATION

The declaration is as follows :

The plaintiff alleges that he was born at Beaumont-du Périgord, department of Dordogne, in France, on the 12th day of May, 1870, of parents belonging to the Catholic Church, as appears by the extract of baptism produced as exhibit No. 1 of plaintiff ;

2. That he received his first Communion, and that he was confirmed according to the rites of the Catholic Church, the 21st day of June, 1880, at Sarlat, in the diocese of Périgueux, in France ;

3. That the defendant was born at Montreal, of parents professing the Catholic religion, on the 7th of March, 1877, and was baptized at Montreal on the 9th of the same month, as appears by the extract of baptism produced as exhibit No. 2 ;

4. The defendant having been brought up in the Catholic religion, received her first Communion at Montreal, and was confirmed at the same place on the 24th of May, 1888.

5. The plaintiff having sought in marriage the defendant about January, 1893, they presented themselves upon the 2nd of May, 1893, before the Rev. William S. Barnes, minister of the Unitarian Church at Montreal, who received their consent, and gave them their certificate of marriage ;

6. At the date of this pretended marriage, the plaintiff and the defendant were both commonly regarded as Catholics, and, in fact, belonged to the Catholic religion in which they were born, and had publicly lived up to that time ;

7. The plaintiff and the defendant have always performed the religious exercises proper to Catholics, and have never either directly or indirectly given reason to believe that they had renounced the Catholic religion ;

8. Under the circumstances, the plaintiff and the defendant could only marry in the Catholic Church, and in presence of their own cure, who alone was a competent officer according to law, and according to the rules promulgated by the Roman Catholic Church to which the parties in this cause belonged.

9. The Rev. William S. Barnes, who celebrated the pretended marriage of the plaintiff and defendant on the 2nd of May 1893, was not a competent officer, in the eyes of the law, to celebrate the marriage of two Catholics ;

10. The plaintiff applied to Monseigneur Louis Nazaire Begin, archbishop of Quebec, to take into consideration the validity of his said marriage with the defendant, and by sentence pronounced the 12th day of July, 1900, the Rev. Cyrille Alfred Marois, apostolic prothonotary, vicar-general of the diocese of Quebec, official judge delegate for matrimonial causes, pronounced and declared the marriage contracted by the said Edouard Delpit,

plaintiff, with Marie Berthe Aurore Jeanne Côté, in the city of Montreal, on the 2nd of May, 1893, null and invalid, on the ground of clandestinity, as appears by the copy of the said sentence ;

11. That the pretended marriage of the plaintiff with the defendant, having been declared null as to the marriage tie, plaintiff has the right to demand its annulment, as to its civil effects by reason of the clandestinity resulting from the fact that it was celebrated by an incompetent officer, and not by a minister of the Church to which the parties belonged.

12. That according to the law of the country the marriage of two Catholics can only be celebrated by a Catholic priest, as also the marriage of two Protestants can only be celebrated by a Protestant minister, and in consequence the marriage of the plaintiff and the defendant, should be declared null, abusive, clandestine, and without civil effects ;

Wherefore, the plaintiff prays that the pretended marriage of the said Edouard Delpit with the said Marie Berthe Aurore Jeanne Côté, celebrated at Montreal the 2nd day of May, 1893, by the Rev. William S. Barnes, having been annulled as to the marriage tie by the religious authority to which they belonged, it be now declared null as to the civil effects, and that the said decree of the ecclesiastical authority pronouncing the nullity as to the marriage tie be recognized and confirmed to all legal effects, and that full force and effect be given to it from the civil point of view.

(Signed) BISAILLON & BROSSARD,

Attys. for Plaintiff.

Montreal, 4 January, 1901.

DEFENDANT'S PLEA

The defendant inscribes in law for the eleventh day of February next against the demand in this case and asks that it be rejected with costs for the following reasons :

1. Because, even if the parties were Catholic at the date of said marriage, according to law the marriage of two Catholics can be validly solemnized by a Protestant minister ;

2. Because, according to law, the sentence of the ecclesiastical tribunal alleged in the declaration is null and of null effect inasmuch as it pretends to nullify the lien of said marriage ;

3. Because, according to law, no ecclesiastical tribunal is competent or has a jurisdiction to pronounce the annulment of a marriage as to the lien ;

4. Because the conclusions of the declaration do not flow from the allegations of such declaration.

(Signed)

TAILLEFER & HEBERT,
Attorneys for Defendant.

(Signed)

E. LAFLEUR,
Counsel for Defendant.

Montreal, January 25th 1901.

THE DEFENCE

And the defendant, under reserve of the inscription in law, filed by her with the present, as a defence to the action, saith and alleges :

1. She does not know the allegations 1 and 2 of the declaration ;

2. She admits the allegations 3, 4 and 5 ;

3. She denies the allegations 7 and 12 ;

4. To the sixth allegation of the declaration she saith that while wooing the defendant the plaintiff has declared himself a non-Catholic ; that he was always considered as such by the defendant, and also the knot of friends whom he used to meet, that at the time of the solemnization of the marriage, the said plaintiff claiming to be a non-Catholic, urged that the solemnization of the marriage be performed by a minister of the Unitarian Church as being the Church standing nearest to defendant's

creed. On the other hand, the defendant was non-Catholic, Protestant, and recognized as such.

5. To the eighth allegation she saith that the marriage between the parties took place before a competent authority and according to law.

6. To the 9th allegation she saith that the Reverend William S. Barnes, by whom said marriage was solemnized on the second day of May, 1893, was a competent officer to unite said parties in marriage, even if both of them were Catholics, which fact she denies.

7. To the 10th allegation she saith, that it is true that the most Reverend Begin, Archbishop of Quebec, was asked by the Plaintiff to inquire as to the validity of said marriage and that Reverend C. A. Marois, mentioned in the declaration, has rendered the sentence filed by the Plaintiff, but Defendant has declined *IN LIMINE LITIS*, the jurisdiction of said tribunal, and she alleges that said tribunal had no jurisdiction to inquire as to the validity of said marriage, and the said sentence is null and has no effect inasmuch as it contends to annul said marriage.

8. The defendant denies the 11th allegation. The said marriage having not been declared null by a competent tribunal but having been duly solemnized publicly and by a competent officer of the civil status, the plaintiff is ill-founded in asking its annulment as to its civil effects.

And the defendant alleges :

9. That on the second day of May, 1893, Rev. William S. Barnes, a minister of the Unitarian Church at Montreal, an officer authorized by law to keep and record a register of the civil status, has duly solemnized the marriage of plaintiff and defendant according to the formalities prescribed by law ;

10. That said W. S. Barnes was provided for said marriage with a license issued by the Secretary of the Province of Quebec, under the seal of the Lieutenant-Governor of said province, dispensing with the publication of bans ;

11. That after the solemnization of said marriage, the plaintiff and defendant have lived together as wife and husband, and that three children were born of their union ;

12. That defendant contracted said marriage in good faith, relying on the said plaintiff's declarations and

believing that she was marrying before a competent officer :

13. That since the solemnization of said marriage in 1893, up to the plaintiff's demand to the ecclesiastical tribunal, defendant has always enjoyed publicly the civil status of a legitimate wife ;

14. That considering reasons above alleged, plaintiff is not receivable to claim against a free consent and a long possession of civil status, and cannot be allowed to invoke the so-called nullity of said marriage.

15. That considering the good faith of defendant, plaintiff is ill-founded in asking that said marriage be declared null in its civil effects, whereas the said marriage, even if it were null (what is denied by defendant) would produce all its civil effects towards the defendant and their children.

Therefore defendant concludes by asking the dismissal of said action, the whole with costs to the undersigned.

Montreal, January 25th, 1901.

(Signed)

TAILLEFER & HÉBERT,
Attorneys for Defendant.

(Signed)

E. LAFLEUR,
Counsel for Defendant.

JUDGMENT

OF

HONOURABLE JUSTICE ARCHIBALD

RENDERED MARCH 31ST. 1901

THE TWO CONTENTIONS.

On these pleadings it was contended by the plaintiff, that according to the view of the Roman Church marriage was a sacrament and produced a spiritual tie, and that it was the office of the Church, and not of the State, to determine the validity of that tie; that the ecclesiastical authority had only gone to that extent, and that the case was now *res integra* before the courts, to determine the validity of the marriage, so far as any civil tie or obligation resulted therefrom.

On the other hand, the contention of the defendant was that the action was based upon a theory of marriage which considered the contract of marriage—(I do not speak of the various civil obligations, which may be stipulated in connection with it, but of the agreement of a man and woman to live together during life as husband and wife)—as establishing a purely spiritual lien between the parties, which is wholly of the resort of ecclesiastical authority either as to its formation or its dissolution.

THE COURT'S DUTY.

If I were to judge merely by the words of the declaration, I would have no difficulty in deciding that this latter

was the true theory of the action. Thus, paragraph 11, of the declaration : " The pretended marriage of the plaintiff with the defendant, having been declared null as to the marriage tie, the plaintiff is well founded to demand its annulment as to its civil effects ;" and then in the conclusion, " whereof the plaintiff prays that the pretended marriage of the said Edouard Delpit with the said Côté, solemnized at Montreal, the 2nd of May, 1893, by the Rev. William S. Barnes, having been annulled as to the marriage tie, by the religious authority..... it be now declared null as to its civil effects, and that the said decree of the ecclesiastical authority be recognized and confirmed, etc."

These words appear sufficiently clear, but for the purpose of emphasising their import, I may be permitted to call attention to the ecclesiastical decree itself, of which the following is the conclusion : " We pronounce and declare the marriage contracted by Mr. Edouard Delpit with Madame Marie Berthe Aurore Jeanne Côté..... null and invalid upon the ground of clandestinity, etc."

Upon which judgment and its confirmation upon appeal to Rome, the Archbishop of Quebec granted to the parties the following certificate : " In consequence we declare that in virtue of the judgment rendered by our official, the 12th of July, 1900, Mr. Edouard Delpit, and consequently his consort, Madame Marie Berthe Aurore Jeanne Côté, are free from every matrimonial bond, and that they may, if they think fit, enter into new marriages."

THE CHURCH'S CLAIM.

This leaves no doubt as to the claim of the ecclesiastical authorities of the Roman Church that the civil judge is totally excluded from deciding as to the validity of a marriage, but that he is limited to the enquiry as to whether civil rights resulting from marriage are to be declared null, in whole or in part, as a result of the annulment of the marriage by the Church.

This cause has awakened so much public interest, and is of so much public importance, that I feel it necessary to state, as clearly as possible, the opposing views which are entertained upon the subject.

Archbishop Bruchesi, the head of the Catholic Church

in the diocese of Montreal, on the occasion of certain publications made in reference to this cause in the newspaper press, thought it necessary to issue a pastoral letter, which is a very able and complete exposition of the doctrine of the Church, with regard to the subject under consideration. I shall quote a few sentences from this document:—

"1. Marriage, a divine institution, which founds the family, and with the family the Christian nation, is a holy thing in itself, especially since Jesus Christ raised it to the dignity of a sacrament of the new law.....

"2. In Christian marriage, the natural contract and the sacrament are one and the same thing. Notwithstanding the opinion of certain theologians of the last centuries regarding the distinction between the contract and the sacrament, it is to-day certain that such opinion cannot be sustained.....

"4. The Church has the right to place obstacles in the way of marriage, either by prohibiting or invalidating, viz., obstacles that either render it illicit or null.... The Church, a complete society, which has received from Jesus Christ all power for the government of its members, can, if it judges expedient, subordinate the validity of marriage to certain conditions relative to the contracting parties, or to certain exterior formalities, and can, in consequence, declare null all marriages contracted outside of these conditions, or without these formalities. The legitimate contract always remains raised to the dignity of the sacrament, but the Church, having determined the conditions required in order that there may be a legitimate contract, the persons who do not observe these conditions are, by the fact, unable to contract legitimately, and consequently unable to receive the sacrament.....

"5. Amongst the invalidating obstacles to marriage established by the Church, one of the most important is that of clandestinity..... Because of this impediment, in order that a marriage may be valid between two Catholics in the limits where the Council of Trent has been published, the presence of the proper priest and two witnesses, are necessary. Consequently, the marriage of two Catholics before a civil officer, or a Protestant minister, is null..... By virtue of the constitution

of the sovereign Pontiffs there are countries, and the province of Quebec is of the number, where, in spite of the promulgation of the Council of Trent, we are to consider as valid marriages celebrated clandestinely between two parties, one being Catholic and the other a baptised non-Catholic. The marriage of a Catholic and a baptised Protestant, or *vice versa*, celebrated before a Protestant minister, although gravely illicit, and calling down the censures of the Church, is, however, a marriage contracted in a valid manner, even in the eyes of the Church herself. Once consummated, this marriage cannot be broken by any earthly power, death alone rendering liberty to the party surviving. But to judge if one of the parties is really heretical, or to declare when a Catholic denying practically his faith, becomes a heretic, especially in that which concerns the sacrament of marriage, this belongs to the ecclesiastical tribunal alone, and the civil power cannot interfere without passing the limits of its jurisdiction, and without usurping a right which Jesus Christ confided alone to His Church.....

"8. All marriages contracted with an invalidating impediment of ecclesiastical law, if the dispensation has not been obtained from the competent religious authority, are null from the beginning, and are not only annullable.

"10. Matrimonial cases are alone answerable to the one ecclesiastical tribunal. This proposition is but the necessary proof of Catholic teaching upon the elevation of marriage to the dignity of the sacrament, for the Church alone can judge all cases concerning the sacraments and their administration.

"11. The State cannot, therefore, establish invalidating impediments to marriage, at least between Christians, neither can it grant dispensations from impediments established by the Church any more than it can, directly or indirectly, affect the sacrament of marriage, and consequently annul the natural contract, without which there is no sacrament.

"12. The secular power can, therefore, adjudge only upon the temporal features of marriage, and here again we must distinguish between the inseparable effects of the substance of the contract, or of the sacrament, and

those which may be separated. As to the first effects, from the moment that it is admitted as legitimate, the cause which produced them, reason exacts that the effects themselves may be considered as legitimate.... As to the other effects, the amount of the marriage portion, the right of succession and heritage, etc., they are within the domain of the secular authority which can legislate and adjudge in these matters provided that its laws do not affect the marriage tie, neither that which necessarily concerns that tie."

JUDICIAL SUPPORT OF CATHOLIC CLAIM.

Nor is this view devoid of judicial support.

Thus, Papineau, J., in the case of *Laramée vs Evans*, reported in 24 Lower Canada Jurist, page 235, on demurrer, decided as follows (translated): "According to the jurisprudence of the country, the sentence of the Roman Catholic bishop regularly pronounced and deciding as to the validity or nullity of the spiritual and religious tie of marriage, between Roman Catholics, can and ought to be recognized by the Superior Court..... Marriage in the Roman Catholic Church is a sacrament, and a spiritual and religious bond, over which the Superior Court has no jurisdiction."

In this case, on the merits, Jetté, J., held as follows (translated): "That before pronouncing on the validity of such a marriage, the Superior Court ought to refer the case to the ordinary of the diocese, in order that he may pronounce previously the nullity of the marriage, and its dissolution, if there be reason for it, saving the right of the Superior Court afterwards to adjudge as to the civil effects of the marriage tie."

Several other cases have been decided, but none putting the ecclesiastical authority on so high a plane. This doctrine may be stated as follows: There is no civil element in the contract of marriage, except that which relates to the civil rights and obligations of the consorts resulting from the marriage. From this it would follow necessarily, that where the Church, as in this country, is entirely free and separate from the State, the civil authority has no right to make laws concerning marriage itself, but only concerning the civil effects which flow from it.

The same doctrine is found very strongly expressed in the work of the late Judge Loranger on Marriage.

THE CODE PROVISIONS.

I may say at once that in my opinion, such a claim is neither justified historically, nor is it compatible with our legislation. By far the most complete statement of the argument leading up to this conclusion was that made by Jetté, J., in the case of *Laramée vs Evans*, reported in the 26 *Lower Canada Jurist*, page 261, and following. The learned Judge dealt with articles 128 and 129 of the Civil Code, as affecting this doctrine. These articles are as follows :—

" 128. Marriage must be celebrated publicly by a competent officer recognized by law."

" 129. All priests, rectors, ministers, and other officers authorized by law to keep registers of acts of civil status, are competent to solemnize marriage. But none of the officers thus authorized can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and obligation of his religion, and the discipline of the Church to which he belongs."

These articles, as is seen, are couched in general language, and would seem to authorize any officer of civil status to solemnize any marriage. The argument of Judge Jetté is intended to prove that the general language of these articles is to be restrained by the preceding law. Thus the word "publicly" must, he thinks, be considered to mean publicly according to the provisions and customs of the various religious denominations with regard to the marriage of their adherents, and that the words "competent officer" must be interpreted to mean a competent officer as limited by said customs, and, in the case of Catholics, the cure of the parish to which the parties belonged. To establish this position, the learned Judge cited the report of the codifiers as follows (translated): "Mr. Commissioner Day, fearing that the word "publicly" employed in article 128, might be interpreted as exacting that the celebration of marriage should take place in the church, as was customary in France, which, as he said, would establish a rule contrary in the constant and recognized usage of

all the Protestant denominations, with the exception of the Anglican Church, but the other commissioners answering to these observations, said the word "publicly" has a certain elasticity which makes it preferable to any other. Being susceptible of more or less extension, it has been employed in order that it might lend itself to the different interpretations which the different Churches and religious congregations in the province may require to give it according to their particular usages and customs, upon which it was not desired to propose any innovation. All that was desired was to hinder clandestine marriages; so thus would be reputed as made publicly, those which were made according to the usages of the Churches to which the parties belonged "

JUDGE JETTE'S VIEW.

As to the interpretation to be given to article 129, relating to competent officers, the learned judge, after observing that this article is very vague, and quoting with approval the words of Troplong, as follows: "If I have been able sometimes, to arrive at a sound conception of certain parts of our law, it is always history which has been my principal light, and my most useful help," proceeds as follows (translated): "If we consult the ancient monuments of the Church, it is seen that even in the early times Christians celebrated their marriages only in the assembly of the faithful, and under the auspices of the priest, who gave them the nuptial benediction. Nevertheless, this benediction, although practiced in the Church, was not necessary for the validity of the marriage, and many persons profited from this fact to abandon the usage. The kings of France, struck with the abuses which resulted from it, exacted upon pain of nullity, since the very earliest times of monarchy, that marriages should be celebrated in the church, and that the consorts should receive the nuptial benediction. We find on this point the following disposition, in Article 130 of the 6th book of the Capitularies of Charlemagne, and of his successors, 'let those who heretofore were not married, not be sufficiently audacious to marry without the benediction of the priest.'

" But these laws after a time fell into desuetude and the abuses resulting from the clandestinity of marriage multiplied to such an extent that it became necessary to give a remedy. It was the Council of Trent that introduced this reform in formally forbidding clandestine marriages, and in exacting for the purpose of assuring publicity, the previous proclamation of banns, and celebration before the proper cure of the parties, upon pain of nullity.

" But this reform of the council was not at first accepted in France. French juris-consults held that the council had exceeded its powers in introducing a rule of discipline upon a point of public law, of the resort of the secular power alone, and refused, in consequence, to recognize the authority of its decrees. This refusal is still invoked to-day by the defendant who, relying upon the decision of the Superior Court in the case of *Connolly vs Woolrich* (11 Jurist, 220), holds that these decrees of the Council of Trent, never having been received in France, have no authority in this country. The defendant relies even to establish this pretension, upon the opinion of the Lords of the Privy Council in the *Guibord* case (11 Jurist, 247), but this authority far from coming to her help, may, on the contrary, be invoked against her. In fact here is what is said at the place cited: 'It is a matter of almost common knowledge, certainly of historical and legal fact, that the decrees of this council, both those that relate to discipline and to faith, were never admitted in France, to have effect *proprio vigore*, though a great portion of them has been incorporated into French ordinances.'

" Thus the Privy Council establishes it as true that as a general rule the decrees of the Council of Trent were not received in France, but it admits what besides is incontrovertible, that a great part of these decrees were afterwards inserted in the ordinances of the kings of France, and thus became the law of the kingdom.

" Now, it happens that those of the decrees of the council which governed the formalities exacted to hinder clandestine marriages, viz., the publication of banns and the celebration before the proper cure of the parties, were precisely adopted by the civil authority, and pro-

mulgated in different ordinances which we shall now examine.

"The decrees of this council, moreover, were so wide and answered so well to the needs of the time that it was not necessary to wait long, in spite of the passions and the prejudices raised against them, in order to see them accepted and promulgated under form of law. Thus in 1579, only fifteen years after the Council of Trent, Henry III, by his ordinance rendered to the States of Blois, declares, that 'none of his subjects can validly contract marriage without preceding proclamation of banns made upon three different holidays.' (Ord. de Blois, Art. 40). In 1606 Henry IV, by his edict of the month of December, confirmed these dispositions of the Ordinance of Blois, and declared, besides, in article 12, as follows: 'It is our will that causes concerning marriages be and belong to the jurisdiction of the judges of the Church upon condition that they shall be obliged to follow the ordinances, even that of Blois, in article 40, and according thereto declare marriages which shall not have been solemnised in the church, and with the form and solemnity required by the said article, null, and not validly contracted, that being the penalty enacted by the councils.'

"Louis XIII, by his declaration of the 26th of November, 1639, entitled 'Declaration of the Rule upon the order which must be observed in the celebration of marriages,' says: 'Art. 1. It is our will that art. 40 of the Ordinance of Blois touching clandestine marriages, shall be exactly kept, and interpreting the same we order that the proclamation of the banns shall be made by the cure of each of the contracting parties with the consent of the fathers, mothers, tutors or curators, if they are minors, or under the power of another, and that at the celebration of the marriage shall be present four witnesses worthy of faith, besides the cure, who shall receive the consent of the parties, and shall join them in marriage according to the form practiced in the Church, and we expressly forbid all priests, as well secular as regular, to celebrate any marriage except between their true and ordinary parishioners, without the permission in writing of the cures of the parties, or of the diocesan bishop, notwithstanding the immemorial customs and privileges

which might be alleged to the contrary, and we order that there shall be made a good and faithful register, as well of the marriages, as of the publication of banns, or of the dispensations, or permissions, which shall have been granted.'

"Lastly, Louis XIV, by his edict of the month of March, 1697, decrees : 'That the dispositions of the holy canons and the ordinances of the kings our predecessors, concerning the celebration of marriages, and especially those which required the presence of the proper cure of those who contract shall be exactly observed, and in execution of them, we forbid to all cures and priests, as well secular and regular, to join in marriage other persons than those who are their true and ordinary parishioners, living actually and publicly in their parishes for a period of at least six months.'

"Thus, then, are the decrees of the Council of Trent, upon the subject of formalities required for the celebration of marriage formally accepted by the secular authority and promulgated by it under the form of laws of the kingdom, and numerous monuments of French jurisprudence afterwards furnished us many examples of the application of these dispositions, the indubitable authority of which is moreover attested, by all the authors; and it is the law, the common law of France, which became also the law of our country, submitted then to the authority of the Most Christian King.'

"We may add that this legislation applied in France to all the citizens without distinction, not only to Catholics, but also to Protestants, and that the latter, who, by the Edict of Nantes, had obtained, in 1598, religious liberty almost complete, had been brought back by the revocation of that edict in 1685, to the regime anterior to the edict: that is to say, to any order of things where their civil status was not recognized and established except in so far as they submitted themselves to the rules established for the Catholics, as well for the proof of the birth of their children as for the celebration of their marriages, or for the burial of their dead. And at the period of the cession of Canada to England, there was not in this colony any registers of civil status for the establishment of the birth, marriage or death of Protestants.

"Such was the state of things that the King of England found established in Canada in 1763.

"Let us now see if this system, which was ours then, afterwards received any modification, first, by the effect of the change of sovereignty; second, by the effect of the new legislation of the country.

"As to the effect of the change of sovereignty, we establish at once that it is a rule of international law that the laws of a ceded or conquered country are considered approved and maintained by the new sovereign, and that they remain in force, excepting, however, those which may be contrary to the fundamental principles of the government of the conquering State. For then, these laws would be found contrary to the will already expressed of the new sovereign.

"But this rule may be modified by the special conditions of cession made between two States. For the purpose of properly appreciating, then, the effects of the cession of the country to England, upon the legislation which we have established above upon the subject of the celebration of marriage, it becomes necessary to take into account first the state of the English legislation upon the subject at that period, and afterwards to examine the conditions made for the inhabitants of the country in this respect by the stipulations of the treaty of cession of 1763."

The learned judge then proceeds to point out that the law in England as to marriage was similar to that in France, with the exception that the Church of England alone had the right of celebrating marriages, and he cites 26 George II, cap. 33, passed in 1753, called Lord Hardwick's Act.

The learned judge continues (translated): "The legislation of the two countries, viz., that of the dominant State and that of the province ceded, was then, upon this matter of marriages, perfectly concordant upon one point, viz., as to the principal and essential formalities exacted in the two countries for the validity of a marriage; and absolutely irreconcilable upon another point, viz., as to the jurisdiction and the competence in the matter of marriage..... On this second point, then, irrepressible conflict if nothing had come to soften the asperities of this situation and modify the application of

the rule of international law that we have already laid down and recognized.

"But the articles of the capitulation of Quebec and of Montreal had stipulated that the free exercise of the Catholic religion should be left to the inhabitants of the colony and the English generals in the name of their sovereign, had acceded to that condition. This stipulation was also formally renewed by the definitive treaty of peace signed on the 10th of February, 1763."

From this the learned judge concludes that in Canada, from the date of cession, marriage could only be solemnized by the proper cure of the parties, and at the foot of the altar in the Catholic churches, and by the ministers of the Episcopal churches, and in their churches, for all non-Catholics.

The learned judge then follows Canadian legislation, showing that from time to time other denominations of Christians obtained the right to keep registers, and in some cases to solemnize marriage. I shall have occasion to make further reference to this legislation, as well as to the further argument of Mr. Justice Jetté, upon which he founds the right of the ecclesiastical authority to take cognizance of causes seeking the annulment of marriage.

PROTESTANT RIGHTS IN FRANCE

In the meantime, I may be permitted to remark that, although the historical statement of the law, as made by Judge Jetté, was accurate so far as it goes, yet there were omissions of some material facts, both with regard to our law under the French regime, and under the English, of a nature radically to affect the conclusion to which the learned judge arrived.

The Edict of Nantes, promulgated in 1598 by Henry IV, was, as Judge Jetté remarked, a charter of religious liberty. It gave to Protestants perfect freedom of worship (with certain local exceptions); it gave them the right to solemnize marriage on equally favorable terms with those enjoyed by the Catholics. In fact, it was a complete charter of religious toleration.

The rights of the Protestants under this edict were from time to time restricted by various edicts made by Louis XIV, but still at least partial toleration of Pro-

testant worship existed in France in 1663, at the time of the creation of the Superior Council at Quebec, and there is some evidence that some parts, at least, of the Edit de Nantes were considered as having force of law in this province in 1676, for we find in the ordinance of the Superior Council relating to procedure, two articles referring to the right of persons professing the religion *prétendue réformée* to evoke causes into a tribunal composed partly of Protestant judges, as they had the right to do under the Edict of Nantes, in France. There do not, however, appear to have been any such mixed tribunals ever established here.

As admitted by the counsel for the plaintiff, and in fact, the ordinance revoking the Edict of Nantes, was never enregistered here, and, therefore, never was law here, but the effect of that is neutralized by another fact, viz., in 1676 the Superior Council of Quebec promulgated an ordinance for the government of the country, under the powers granted to it by the King, one of the articles of which was as follows (see Edits et Ordonnances, Vol. 11 p. 72) (translated): "It is forbidden to persons of the pretended reformed religion to assemble for the purpose of exercising their religion within the limits of this country upon pain of chastisement according to the rigor of ordinances, and such persons shall not winter in the future in this country, without permission, and if anyone shall winter here for a legitimate cause, he shall have no public exercise of his religion, and shall live as a Catholic without scandal."

Thus it is seen that the conclusion of the honorable judge that under the French regime previous to the cession none but a Roman Catholic priest could celebrate marriages in this country, and that only of his own parishioners was strictly accurate, though such accuracy did not depend entirely on the grounds laid down by him.

OLD ENGLISH LAW.

Now, if we look at Lord Hardwick's Act, which was the law of England relating to marriage at the time of the cession of Canada, we will find a much more important omission. That act is the 20th George II, Chap. 33. and the effect of it was to render marriages celebrated

elsewhere than in an Anglican Church, after publication of banns or license obtained from ecclesiastical authority null and void. But it differed from the French rule in this that all persons whether English churchmen, Roman Catholics or dissenting Protestants, could be married as such and without in any way conforming to the English Church. Now, the omission to which I have referred is contained in the eighteenth clause of said act, which is as follows: "Provided likewise that nothing in this act contained shall extend to that part of Great Britain called Scotland, nor to any marriages amongst the people called Quakers, or amongst the persons professing the Jewish religion, where both parties to any such marriage shall be of the people called Quakers, or persons professing the Jewish religion respectively, nor to any marriages solemnized beyond the seas."

Thus, it is seen that Lord Hardwick's Act affected England alone, where the English Church had a legal establishment. The cession of the country to England would therefore not introduce here Lord Hardwick's Act, which was specially excluded by its terms from operation beyond the seas, but would introduce the English common law on the subject of marriage.

We must, therefore, enquire what that was.

The opening words of the eighth section of Lord Hardwick's Act give us a glance at the nature of the marriage customs which prevailed before Lord Hardwick's Act, as follows: "And whereas many persons do solemnize matrimony in prisons, and other places without publication of banns or license of marriage, first had and obtained....."

There is fortunately no possibility of question as to the common law of England relating to marriage except with regard to a comparatively minor point.

Blackstone states it as follows (Vol. 1, p. 433): "Our law considers marriage in no other light than as a civil contract. The holiness of the matrimonial state is left entirely to the ecclesiastical law: The temporal courts, not having jurisdiction to consider unlawful marriages a sin, but merely as a civil inconvenience, the punishment therefore, of annulling incestuous or other unscriptural marriages is the province of the spiritual courts."

which act *pro salute animæ*. And taken in a civil light, the law treats it as it does all other contracts, allowing it to be good and valid in all cases where the parties at the time of making it were, in the first place, willing to contract; secondly, able to contract, and lastly, actually did contract in the proper forms and solemnities required by law. First they must be willing to contract. *Consensus non concubitus facit nuptias* is the maxim of the civil law in this case, and it is adopted by the common lawyers who, indeed, have borrowed (especially in ancient times) almost all their notions of the legitimacy of marriage from the canon of civil laws."

Then as to the ability of the parties to contract, Blackstone says: "These disabilities are of two sorts, first, such as are canonical, and, therefore, sufficient by the ecclesiastical laws to void the marriage in the spiritual court; but these in our law, only make the marriage voidable, and not *ipso facto* void, until sentence of nullity be obtained. Of this nature are precontract, consanguinity, or relation by blood; and affinity or relation by marriage, and some particular corporal infirmities."

Then as to legal disabilities: "The first of these legal disabilities is a prior marriage or having another husband or wife living. The next legal disability is want of age. This is sufficient to avoid all other contracts, on account of the imbecility of judgment in the parties contracting.... Another in capacity arises from the want of consent of parents or guardians The fourth, want of reason. Lastly, the parties must not only be willing and able to contract, but actually must contract themselves in due form of law, to make it a good civil marriage. Any contract made *per verba de presenti* or in other words in the present tense, and in case of cohabitation *per verba de futuro*, also, between persons able to contract, was before the late act (Lord Hardwick's Act), deemed a valid marriage to many purposes: And the parties might be compelled in the spiritual courts to celebrate it *in facie ecclesiæ*."

Blackstone, in discussing the provisions of Lord Hardwick's Act, says: "It is held to be also essential to a marriage that it be performed by a person in holy orders, though the intervention of a priest to solemnize this contract is merely *juris positivi*, and not *juris naturæ*."

lis aut divini, it being said that Pope Innocent III was the first who ordained celebration of marriage in the Church; before which it was totally a civil contract, and in the times of the grand rebellion, all marriages were performed by the justices of the peace, and these marriages were declared valid without fresh solemnization by statute 12 Car. II, cap. 33."

It is undeniable that according to the canon law, a marriage *per verba de presenti* without the intervention of a priest was a valid marriage. See exhaustive judgment by Mr. Justice Monk in *Connolly vs Woolrich*, 11 Lower Canada Jurist.

A SCOTTISH ILLUSTRATION.

It is undeniable also that that was the law of Scotland at the time of which we treat (see *Dalrymple vs Dalrymple*, 2 Haggard's Consistory reports, p. 54).

This great case decided in the Consistory Court of London in 1811, and afterwards unanimously confirmed by the Court of Arches, concerned a Scotch marriage. Dalrymple was an English officer, and was in 1804, quartered in Scotland. There he met Miss Gordon, and they became mutually attached, and made in writing a mutual acknowledgment and declaration of marriage, which they agreed, however, to keep secret, as it was thought Dalrymple's family would object to the union. It was also alleged that there had been concubitus. Dalrymple afterwards married another woman in due form, according to the English marriage act.

The questions decided were, first, whether the present declaration of marriage was alone sufficient to constitute a valid marriage; and, second, whether joined with concubitus it was sufficient. The case being tried in England, the Scotch law was proved by eminent lawyers examined as witnesses. The court also took into consideration the opinions of text writers and Scotch judicial decisions, and found a vast preponderance of all three sources of authority in support of an affirmative answer to the first question, and absolutely no dissenting opinion with regard to a like answer to the second question. The learned judge at page 68 marks "Marriage

in its origin is a contract of natural law; it may exist between two individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind. It is the parent, not the child, of civil society. In civil society it becomes a civil contract regulated and prescribed by law, and endowed with civil consequences. In most civilized countries, acting under a sense of the force of sacred obligations, it has had the sanctions of religion superadded. It then becomes a religious as well as a natural and civil contract: For it is a great mistake to suppose that because it is the one, it may not likewise be the other. Heaven itself is made a party to the contract, and the consent of the individuals pledged to each other is ratified by a vow to God. It was natural enough that such a contract should, under the religious systems which prevailed in Europe, fall under ecclesiastical notice and cognizance with respect both to its theological and its legal constitution. Though it is not unworthy of remark that amidst the manifold ritual provisions made by the divine law giver, of the Jews for various offices, and transactions of life, there is no ceremony prescribed for the celebration of marriage..... The law of the Church, the canon law, although in conformity to the prevailing theological opinion, it revered marriage as a sacrament, still so far respected its natural and civil origin as to consider that where the natural and civil contract was formed, it had the full essence of matrimony without the intervention of a priest. It had even in that state the character of a sacrament; for it is a misapprehension to suppose that this intervention was required as a matter of necessity even for that purpose before the Council of Trent..... The consent of two parties expressed in words of present mutual acceptance constituted an actual and legal marriage, technically known by the name of *sponsalia per verba de presenti*..... Such was the state of the canon law, the known basis of the matrimonial law of Europe.

The learned judge then cites a number of cases to show that the canon law as modified by one or two statutes was the matrimonial law of England also, and states that he proposes to treat it as the law of Scotland

unless modifications thereof be established. He then cites 32 Henry VIII, Cap. 38, Sec. 2, and 2 Ed. VI.

Although Sir William Scott in his judgment considered the question as to the matrimonial law of England, and determined that marriage *per verba de presenti* was good marriage without the intervention of a priest in England before the Marriage Act, still the case concerned the law of Scotland, and the remarks made concerning the law of England were *obiter dicta*, and therefore did not carry the weight of judicial decision.

AN IRISH CASE.

The question was, however, subsequently raised in the case of *Regina vs Millis*, and decided by the House of Lords. Millis, a member of the Episcopal Established Church in Ireland, married a Presbyterian woman at the house of a Presbyterian minister duly placed and according to Presbyterian forms. Subsequently Millis married another woman in Engl. at a due form under the Marriage Act. He was indicted in Ireland for bigamy, and the case turned on the validity of the first marriage. (The Marriage Act did not extend to Ireland.) The judges in Ireland were equally divided and the case went to appeal before the House of Lords (See 10 Clark and Finnelly's Reports, page 534.) The whole lore of the subject is exhausted in this case, and the judgment has since been followed as decisive, although it was arrived at by an even division of the judges.

Tindale, chief justice, states the opinion at which the judges arrived as follows: "By the law of England as it existed at the time of the passing of the Marriage Act, a contract of marriage *per verba de presenti* was a contract indissoluble between the parties themselves affording to either of the contracting parties, by application to the spiritual court, the power of compelling the solemnization of an actual marriage: but that such contract never constituted a full and complete marriage in itself unless made in the presence and with the intervention of a minister in holy orders. It will appear, no doubt, upon referring to the different authorities that at various periods of our history there have been decisions as to the nature and description of the religious solemnities necessary for the

completion of a perfect marriage, which cannot be reconciled together ; but there will be found no authority to contravene the general position that at all times, by the common law of England, it was essential to a full and complete marriage that there must be some religious solemnity : that both modes of obligation should exist together, the civil and religious ; that besides the civil contract *per verba de presenti*, which has always remained the same, there has, at all times, been also a religious ceremony which has not always remained the same, but has varied from time to time according to the variation of the laws of the Church."

And then on page 687 Lord Tindale proceeds : " We now pass to the consideration of the particular circumstances involved in the first question proposed by your lordships, which supposes this marriage to have taken place in the house and in the presence of a regular placed minister of the congregation of Protestant dissenters called Presbyterians. As we have already stated our opinion that to make the marriage a complete marriage it must be solemnized in presence of a minister in holy orders, it is only necessary to look back to the time when that law first obtained in England to enable us to answer that question without difficulty.

" At the early period when such law arose, and down to a comparatively recent period, the expression priest, cure, minister, deacon and person in holy orders, which are the words met with in the different constitutions and councils and authorities bearing upon the subject, could point to those persons only who had received episcopal ordination : there where no others known at all. All but they were laymen ; and unless some act of legislation has interposed its authority and given the Protestant dissenting minister in Ireland the same power for this purpose as the persons in holy orders did before possess, we think the entering into the contract in his presence cannot in the legal sense of the word be held to be entering into it in the presence of a person in holy orders."

The case of Beamish and Beamish was afterwards considered by the House of Lords, which was the case of a clergyman of the Established Church in Ireland undertaking to marry himself without the assistance of a third person in holy orders, and the judges there felt them-

selves bound by the case of *The Queen against Millis* above referred to, but the following remarks, however, occurred in the judgment, which will be found in the 8th Jurist, N. S., at page 781, as follows: "Had the case been *res nova* we might have thought that the law of Edmund, the Rubric, and the other indications that by the law of England a priest was to be present at a marriage, were but reflections of the general law of the Church by which from the earliest times the intervention of a priest had been inculcated and from time to time enforced by penalties, though never before the Council of Trent, by nullifying the marriage at which no priest assisted. That view was presented and considered in *Regina vs Millis*, and it raised a question worthy of all the zeal, learning and genius which it called forth, but that view was not adopted in the result, and it is not competent for us to restore it.....And whatever hardship such a law may, in the course of years, have wrought to dissenting bodies, and also to British subjects in the colonies and in foreign countries where no priest could be procured, if the law was ever rightly held to apply under such circumstances as to which we say nothing," etc., etc.

THE COMMON LAW OF ENGLAND.

In England it is seen that an established Church existed, of which the sovereign was the head, which could make ecclesiastical laws governing the Church and the people as members of the Church, and having ecclesiastical courts to put such laws into force, of which the sovereign was also the head. And there it appears that the agreement of the parties to a present marriage was sufficient, so far as the temporal law was concerned, to make a good marriage, but the ecclesiastical law required a religious solemnization. It is more than doubtful whether these ecclesiastical restrictions would accompany colonists to this country, in which no ecclesiastical establishment was ever introduced. The Church of England in Canada is not the Established Church of England, but merely a voluntary association of persons holding the doctrines and worshipping according to the forms of the Church of England. No ecclesiastical court was ever constituted in this country. Those laws requir-

ing the solemnization of marriage in the presence of a person in holy orders, in the narrow sense above given, were utterly unsuitable to his country. In the United States, to which the common law of England was also carried by colonists, the decisions are unanimous that the common law of England relating to marriage was such as set forth in the case of *Dalrymple vs Dalrymple*, viz., that the present agreement of the parties to be then husband and wife, constituted a valid marriage.

Bishop on the law of marriage and divorce, vol. 1, number 77, says: "Because of the high favor in which marriage is held by the law, we have transmitted to us the special maxim *semper præsumitur pro matrimonio*. When a man and a woman are living together as husband and wife, the law will hold them to be such even against strong probabilities that they are not—or when a ceremony of marriage is shown there will be a like presumption that it is valid unless some distinct and special fact clearly appears in the particular case to the contrary."

At number 116, Bishop says: "From the familiar proposition that colonists to an uninhabited country take to their new locality those laws of the mother-country which are adapted to their somewhat altered situation and circumstances, it follows that all such laws of England relating to marriage and divorce by whatever names they are known are as they existed at the respective times of the settlements, common law in our several States. On the other hand from the fact that colonists do not carry the courts with them, it results also that those laws can practically be administered with us only as far and as fast as tribunals are established on which directly or by implication is conferred jurisdiction."

AN INDIAN CASE.

Bishop, thereupon proceeds to show that the expression "common law" includes matrimonial laws, and cites in support an English case of *Lautour vs Teesdale*, reported in 8, Taunton, 830. In this case the question was as to the validity of marriage between two British subjects, Protestants, celebrated at Madras before a Catholic priest without banns and without license. The judgment was in part as follows: "Both the defendants are said to be

Protestants and British subjects, and the place in which the ceremony was performed was Madras, where they resided as part of the British settlement there; and the question is whether under the laws of marriage operating on them at Madras this can be considered a legal marriage. In order to decide this question, it is material to consider who the parties were, and among whom the ceremony took place. Now, British subjects settled at Madras, are governed by the laws of this country, which they carry with them, and are unaffected by the laws of the natives. The question, therefore, is whether by the laws of this country to which they alone are subject, and by which alone their actions are to be governed, this marriage was legal. In this country we judge of the validity of a marriage by what is called The Marriage Act. but that statute does not follow subjects to foreign settlements. The question remains whether this would be a valid marriage here before that act passed. The important point of the case, viz., what the law is by which such a question is to be governed was most fully and ably discussed in the case of *Dalrymple vs Dalrymple*, which has so often been alluded to, and the judgment of Sir William Scott has cleared the present case of all difficulty which might at a former time belong to it. From the reasoning there made use of, and from the authorities cited by that learned person, it appears that the canon law is the general law throughout Europe as to marriages except where that has been altered by the municipal law of any particular place. From that case and from those authorities it also appears that before the Marriage Act marriages in this country were always governed by the canon law, which the defendants, therefore, must be taken to have carried with them to Madras. It appears also that a contract of marriage entered into *per verba de praesenti* is considered to be an actual marriage: though doubts have been entertained whether it be so unless followed by cohabitation. In the present case a ceremony was performed, the regularity of which it is unnecessary to discuss, because it was followed by cohabitation. All that is required therefore by the canon law has been amply satisfied.

THE APPLICATION HERE.

Bishop thereupon proceeds to state the law as introduced into the States as being the common law of England as stated in the above cited case, and to point out that all American judgments have to hold it, and that owing to the maxim that everything is presumed in favor of marriage in States where special forms are directed for marriage, if nullity is not pronounced for violation of those rules, the common law marriage exists side by side with the statutory one.

Authorities are numerous which hold that colonists only carry with them such portions of the law of their own country as are applicable to their new situation in the country colonized. See Forsyth Constitutional Law, pages 1 to 6. See also Clarke, Colonial Opinions, upon the question as to what laws colonists carry with them.

I may say also that the case of Connolly and Woolrich, which concerned a marriage in the Northwest Territories by mutual consent alone, without the intervention of any priest, but simply in accordance with the customs of the Cree Indians, was held to be a valid marriage by the courts of this country, and although an appeal was carried to the Privy Council, that appeal was not prosecuted. *Breakey vs Breakey*, 2 U.C., Q.B., 349. *O'Connor vs Kennedy*, 15, O. R., Q. B., 25. *Piers vs Piers*, 2 H. L. C., 331. *DeThoren vs Attorney-General*, 1 L. R., H. L. and P. C. 686. *Gastrey Velaide Aronegary vs Sembecutty Valgalie*, 6 L. R. H. L. and P. C., 372. *Robb vs Robb*, 20, O. R. Q. B., 601.

It appears then almost certain that the common law of England, so far as brought to this country, would hold a marriage *per verba de presenti* without the intervention of a priest as a valid marriage, but in any event it is certain that as introduced into this country it did hold such a contract as creating an indissoluble bond, which the parties were not at liberty to set aside at will; and second, that it certainly was a valid marriage when made in the presence of an ordained minister or person in holy orders, without regard to the place where it was celebrated, without regard to the religion of the persons married.

ANTE-CODE ENACTMENTS.

Now, supposing these ecclesiastical restrictions upon marriage did come into this country with the British colonists, there can, I think, be no doubt that a marriage solemnized in the presence of any ordained minister in this country, would under the judgment in the case of the Queen *vs* Millis be a valid marriage previous to the code. I refer to 15 Victoria, Cap. 105, Section 1, which is as follows: "Whereas the recognition of legal equality among all religious denominations is an admitted principle of colonial legislation; and whereas in the state and condition of this province to which such a principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct legislative authority recognizing and declaring the same as a fundamental principle of our civil policy, therefore, etc."—and the statute proceeds to enact such absolute religious equality.

There had been an earlier statute, namely, 35, George III, Cap. 4, relating to the registers of civil status, which enacted among other things as follows: "It is hereby enacted by the authority of the same that from and after the 1st day of January, which will be in the year subsequent to the passing of this act, in each parish church of the Roman Catholic communion, and also in each of the Protestant churches or congregations within this province, there shall be kept by the rector, curate, vicar, or other priest or minister doing the parochial or clerical duty thereof, two registers of the same tenor, each of which shall be reputed authentic, and shall be equally considered as legal evidence in all courts of justice, in each of which the said rector, curate, vicar or other priest or minister..... shall be held to enregister regularly and successively all baptisms, marriages and burials so soon as the same shall have been by them performed."

Now, Statute 15 Victoria furnishes an authoritative legislative determination of the interpretation to be given to the words of 35, George III, particularly as to the meaning of the word *Protestant* in that statute, so that it is no longer possible to pretend that the word extended only to adherents of the Anglican Church, and to ministers of that denomination.

The statute 35, George III, in the first place constitutes all ministers, whether Protestant or Roman Catholic, having the charge of churches, as officers of civil status, obliged to keep registers, and enter therein the records of baptisms, marriages and burials performed by them, and thus assumes their authority, which is nowhere else given by statute, to perform such ceremonies. Thus the right of ordained ministers of all organized bodies of Christians is by these statutes, 15 Victoria, and by the statute 35, George III, assumed.

Judge Jetté, in his judgment in *Laramée and Evans*, cites a very large number of statutes, almost all before the statute 15 Victoria, giving to the several organized bodies of Christians rights to keep registers of civil status, and remarks that in these statutes, although the persons applying for them had applied for the right to solemnize the different acts of civil status, that the Legislature in most cases only granted them the right to keep registers. Nor is this list of statutes cited by Judge Jetté in opposition to the views above stated; on the contrary, they appear to me to lend them direct support, because if the Legislature had supposed that such acts could not be performed by the Christian organizations applying for the rights, the right to keep registers of civil statute would not have been granted without granting, at the same time, the right to perform the acts of civil status themselves. One of these acts leaves this point without doubt, and that is the very first one passed, namely, 9 George IV, Cap. 2, concerning the Church of Scotland, in which it was declared "that all marriages which have been heretofore or shall be hereafter celebrated by the ministers in communion with the Church of Scotland were, and shall be considered legal and valid for all intents and purposes whatsoever." This, it is seen, is a declaratory act which establishes the existence of a previous right in the ministers of that Church to perform acts of civil status, and it is difficult to see how that Church could have had such rights unless the same rights belonged to the other organizations of Christians.

It may, therefore, be considered as certain that since the cession an ordained minister of any denomination of Christians in this province could celebrate a valid marriage, and was an officer of civil status to keep a register

thereof, since 35 George III. without any license, without any publication of the banns, without any restriction as to the place where the marriage should be celebrated, and without any reference to the fact, that the persons married were or were not members of the particular religious denomination to which the minister belonged.

LAW BEFORE CESSION

In opposition to this was the law previously existing that no person could be married in this country except by a Catholic priest in a Catholic church after the publication of banns or dispensation from the ecclesiastical authority, and that only by the proper cure of the parties, or some one licensed by him in writing, so that no person not of the Catholic religion could be married in this country without a submission, either real or feigned to the Catholic religion; and we have to consider which of these two laws continued to prevail in this country after the cession.

Halleck, International Law, page 832, remarks as follows: "The English court makes a distinction between ceded or conquered territory, and territory acquired by discovery or occupancy and peopled by the discoverer. British colonists are considered as carrying with them such laws of their sovereign as are beneficial to the colony and applicable to the new condition of the colonists; but penal laws inflicting forfeitures and disabilities, laws of titles, bankruptcy, mortmain, and police, do not extend to colonies, not *in esse*.....

"But the rule is different with respect to territory acquired by cession or conquest, for the municipal laws of such territory at the time of its acquisition remain until changed by competent authority, and the subjects of the new sovereignty who enter such newly acquired territory do not in general carry with them the laws of their sovereign; but with respect to their rights and relations *inter se* they are in the same condition as the inhabitants of such territory; that is, they are governed by the laws and usages of the country at the time of the conquest or cession. Whoever purchases, lives, or sues there puts himself under the laws of the place. An Englishman in Ireland, Minorca, the Isle of Man, or

the Plantations, has no privilege distinct from the natives."

This last sentence is extracted textually from the judgment of Lord Mansfield in *Hall vs Campbell*. 1 Cowper, Report 208. See also authorities cited by Halleck at page 833.

On page 831, Halleck says: "When it is said that the law political (that is of the conquered country) ceases on the conquest, and that the law municipal continues until changed by the will of the conqueror, it is not meant that these latter laws, *proprio vigore*, remain in force, but that it is presumed the new political sovereign has adopted and continued them as a matter of convenience. They do not derive any force from the will of the conquered: for the person capable of having and expressing a will—the body politic or law-making power of the conquered—is extinguished by the conquest. When, therefore, we come to pronounce upon the force of a law of the conquered people after the conquest, and to determine whether it has been tacitly adopted by the conqueror, we must look to the character of its provisions, and compare them with the laws and institutions of the conquering State, that is with the will of the conqueror as expressed by himself in similar matters. Whatever is in conflict with or directly opposed to such expressions of his will, we cannot presume to have adopted by his tacit consent."

There could not be a more complete conflict than that which existed between the old laws relating to the celebration of marriage and those which governed British subjects in the colonies. It could not for a moment be supposed that a Protestant nation intended to leave its subjects under laws which would compel them to conform to the Roman Catholic religion, especially at a time when the exercise of that religion in England was strictly prohibited.

A CAPE COLONY PRECEDENT.

The case of *Ruding vs Smith*, reported in 2, Haggard, Consistory Reports, page 375, concerned a marriage between British subjects in Cape Colony, not according to the forms provided by the Dutch law of that place for val-

edity. At the time the country had capitulated to the British, but no new government had yet been established, and no definite treaty of cession had been made. In the articles of capitulation there was the following clause: "The inhabitants shall preserve the prerogatives they enjoy at present." Lord Stowell, who judged the case, said at page 380, "it sometimes happens that the conquered are left in possession of their own laws; more frequently the laws of the conquerors are imposed upon them, and sometimes the conquerors, if they settle in the country, are content to adopt for their own use such part of the laws prevailing before the conquest as they may find convenient under the change of authority to retain. I am yet to seek for any principle derivable from that law (the law of nations) which bows the conquerors of a country to the legal institutions of the conquered..... The laws may harsh and oppressive in the extreme; may contain institutions abhorrent to all the feelings and opinions and habits of the conquerors..... But it is argued to be the doctrine of the law of England..... It would be a most bitter fruit of the victories of its subjects if they were bound to adopt the jealous and oppressive systems of all the countries which they subdued, and to groan under all the tyranny, civil and ecclesiastical, of these systems, until their own government, occupied by the pressure of existing hostilities, had time to look about, to collect information, and to prescribe rules of conduct more congenial to their original habits. I am perfectly aware that it is laid down generally that the laws of a conquered country remain until altered by the new authority..... Even with regard to the ancient institutions, no small portion of the ancient law is unavoidably superseded by the revolution of government that has taken place. The allegiance of the subjects, and all that respects the administration of the law in the sovereign and appellate jurisdictions—and all the laws connected with the exercise of sovereign authority..... This very case furnishes instances of this sort. In the third article it is stated that dispensations from the publication of banns must be had from the authority of the States of Holland, which would be contrary to the prerogative of the British sovereign to issue such dispensations."

In the case just referred to, Lord Stowell indicated that in the condition in which things then were, viz., where the country had capitulated, but had not yet been ceded, nor any government formed, a distinction might exist as to the laws which would be applicable to the British holders of the country, and the ancient inhabitants; but that was owing to the fact that in that case no government had been set up by the conquerors.

In the present case by the 14th, George III, a statute was passed which specified the laws which should prevail, and there could certainly be no ground whatever for the supposition that in the case of this country one law could govern the ancient inhabitants, and another and different law govern the newcomers.

NEW LAW FOR ALL.

It is, therefore, manifest that the old law was incompatible with the institutions of the conqueror, and did not remain, and that not only the Protestant subjects of this country were entitled to the use of the common law in this country, but the Roman Catholic French subjects were also entitled to it.

And Mr. Justice Jetté admits that as a matter of law, the previous provisions being incompatible with the new ones, would be superseded and become obsolete; but he derives from the fact that the Catholics were permitted by the Treaty of Peace the free exercise of their religion, that their old institutions relating to matrimony formed part of the exercise of their religion, and consequently was reserved to their jurisdiction. There can be no doubt that so far as regards the formalities for the celebration of marriages in Catholic churches, those who belong to those churches and require marriage within them, are bound by their contracts, either express or implied, to conform to the rules of the Church to which they belong; but that is very far from saying that as a matter of law they are not entitled to take advantage of the more liberal rules prevailing for their Protestant fellow subjects.

All the authorities I have cited, while they admit a religious element in marriage, allege that it is essentially a civil contract, but one of so high a nature that nearly every civilized people has thought proper to enforce the

obligations which flow from it by considerations of religion.

The 14th George III provided that the country should still retain the previous law relating to property and civil rights, and provided also for the free exercise of the Roman Catholic religion subject to the supremacy of the sovereign; but the law relating to marriage does not fall within the description of laws relating to property and civil rights.

As Blackstone observes, "It is partly canonical and partly civil." Marriage undoubtedly does produce civil rights, but the contract itself is entirely distinct from the rights which flow from it. It belongs to the region of natural law. The British North America Act recognizes this distinction. Thus, although property and civil rights by section 91 of that act is placed under the jurisdiction of the legislatures of the provinces, marriage, including all the hindrances thereto, belongs to that of the Parliament of Canada. And although the solemnization of marriage is given by the same statute to the local legislatures, it is made a special category not included in that of property and civil rights, and it is difficult to see how laws relating to the solemnization of marriage could be considered as having any relation to property and civil rights.

Thus then the common law of England, as above described, constituted the law of this country as to marriage previous to the statutes which have been passed here. Nor did this law impose any disability upon the previous inhabitants, because it left them absolutely free to follow all the formalities to which they had been previously accustomed.

In approaching the consideration of our statute law upon this subject we must bear in mind that the circumstances of the old time were widely different from those which prevail now. Both in England and in France there existed an established Church which had jurisdiction over the people generally, recognized by the State, and sanctioned by civil penalties. There was no toleration or freedom of conscience in religious matters. Heresy was an offence punishable by temporal penalties, and the laws in that respect were executed with considerable rigor.

The people could not escape by ceasing to profess the religion of their respective churches. Religious toleration was an idea still in the future. The first toleration act was passed in England in 1688. It gave freedom of religious conviction, but was very far from giving religious equality, and it left Roman Catholic under special disabilities which were not removed until the 31st. George III. in 1791. long after the cession

One of the most potent means by which it was sought to compel religious uniformity under both of the systems above referred to was by compelling the baptism and education of children by the established Church: by laws compelling the celebration of marriage in the established Church, and likewise by laws controlling the interment of the dead. These exclusive laws date only from the Council of Trent, and are in contrast with the laws which prevailed earlier and still prevail, in every country where religious equality exists.

THE STATUS OF TO-DAY.

We have then now to look at our own law, not as a law suitable for promoting the interests of any particular denomination of Christians, but as a law the intention of which was to provide against the evils which may result from clandestinity in marriage.

We come now to the consideration of our own statute law upon this subject. With regard to the interpretation of these statutes, the proper rule to adopt is to follow the clear meaning of the words used where there is no ambiguity, but where doubt exists, previous legislation is to be taken into account, as well as the reason or motive of the statute to be interpreted. Thus in a case of *Varliano vs The Bank of England* (23. Q. B. D. 243), Lord Herschell thus stated the rule: "The proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law, and not to start with enquiring how the law previously stood, and then assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view I am of course

far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code; if, for example, a provision be of doubtful import, such resort would be perfectly legitimate."

Apart from a series of statutes concerning registration and officers of civil status, some acts concerning the validity of marriages previously celebrated, and some relating to marriage licenses, we have no Canadian legislation on the subject affecting this province, previous to the code.

Article 57, of the Civil Code provides: "Before solemnizing a marriage, the officer who is to perform the ceremony must be furnished with a certificate establishing that the publication of banns required by law has been duly made; unless he has published them himself, in which case such certificate is not necessary."

Article 58: "This certificate, which is signed by the person who published the banns, mentions, as do also the banns themselves, the names, surnames, qualities or occupations and domiciles of the parties to be married, and whether they are of age or minor; the names, surnames, occupations and domiciles of their fathers and mothers, or the name of the former husband or wife. And mention is made of this certificate in the act of marriage."

Articles 130 to 133 of the Civil Code provide that banns are to be published by the priest, minister or other functionary in the Church to which the parties belong, on three different Sundays, and if the parties have not been domiciled in that parish at least six months, then the publication is to be made also at their last domicile in Lower Canada, but if they have come from outside of Lower Canada, the officer solemnizing the marriage is bound to ascertain that there are no legal impediments.

Then article 134 provides: "The authorities who have hitherto held the right to grant licenses or dispensations for marriage may exempt from such publications."

Article 59 says: "The marriage ceremony may, however, be performed without this certificate (that is the certificate of publication of banns) if the parties have obtained and produce a dispensation or license from a

competent authority, authorizing the omission of the publication of banns."

59a. "In so far as regards the solemnization of marriage by Protestant ministers of the Gospel, marriage licenses are issued by the Department of the Provincial Secretary, under the hand and seal of the Lieutenant-Governor, who for the purpose thereof is the competent authority under the preceding article."

Article 1208, of the Revised Statutes of Quebec, referring to these licenses, is as follows: "The licenses issued under this section are furnished by such persons as the Lieutenant-Governor-in-Council names for that purpose to all persons requiring the same, who shall previously have given a bond together with two sureties, being householders, and in the form appended to this section."

The amount of this bond is eight hundred dollars, and the condition of liability is the existence or non-existence of any lawful let or impediment, pre-contract, affinity or consanguinity to hinder the proposed consorts being joined in holy matrimony, and afterwards living together as man and wife.

There is no legislation affecting Lower Canada regarding the issue of these marriage licenses except such as refers to the conditions under which they are to be issued, and to the disposal to be made of the fees which are authorized to be charged therefore. The issue of these marriage licenses is an exercise of the prerogative of the Crown. This was said by Lord Stowell, in the case of *Ruding vs Smith*, above cited, where he referred to the fact that the law of Cape Colony, being then a conquered country, could not interfere with the exercise of the royal prerogatives to grant licenses or dispensations.

MARRIAGE LICENSES.

Mr. Lamb, in the second *Revue Critique* at page 38, remarks on the subject of marriage licenses, "Heretofore marriage licenses have been issued by the Governor-General as representing the Crown. Our statute law 35, George III, Cap. 2, section 4, as well as the Civil Code recognized the existence of this licensing power, although it does not appear to have been specially enacted in Lower Canada as in Upper Canada. (See consolidated Statutes

Upper Canada, Cap. 83, section 2). This system is evidently adopted here under the common law of England. By this common law as well as by statute law, the Crown holds supremacy, in civil as well as in ecclesiastical matters."

The origin of marriage licenses, as distinct from dispensations from the Church of Rome, is found in the statute 25, Henry VIII, Cap. 21, Sections 3, 4, 5, 6, 7 and 8. These sections prohibit suing for dispensations, licenses, etc., to the Pope, or any person out of the realm, and provide that the Archbishop of Canterbury, spiritual primate of the English Church, shall issue the same after proper enquiry into the causes, provided that in any matter where the tax for obtaining such dispensations from the See of Rome would have cost more than four pounds, the Archbishop's license should be confirmed by the King's great seal. And even in other causes where the parties interested desired such confirmation it could be obtained upon payment of certain fees.

Section 7 of the act proceeds then as follows: "And that every such license, dispensation, composition, faculty, rescript, and writing of what name or nature soever it be, for such causes as the tax was wont to be four pounds or above, so granted by the Archbishop and confirmed under the great seal shall be accepted, approved, allowed and admitted good and effectual in the law in all places, courts and jurisdictions, as well spiritual as temporal, within this realm and elsewhere within your dominions, and as beneficial to the persons obtaining the same as they should have been if they had been obtained with all things requisite of the See of Rome or of any other person by authority thereof, etc."

And section 8: "And that all children procreated after solemnization of any marriage to be had or done by virtue of such licenses or dispensations, shall be admitted, reputed and taken legitimate, in all courts, as well spiritual as temporal, and in all other places, and inherit the inheritance of their parents and ancestors within this realm, and all other of your dominions according to the laws and customs of the same; and all acts to be taken, had or executed according to the tenor of such licenses, etc., to be made or granted by the authority of

this act shall be firm, permanent and remain in force ; any foreign laws, constitutions, decrees and canons, decretals, inhibition, use, custom, prescription, or any other thing had or hereafter to be made to the contrary notwithstanding."

Article 19 : " Provided always that this act nor anything or things therein contained shall be interpreted or expounded, that your grace, your nobles and subjects intend by the same to decline or vary from the congregation of Christ's Church in anything concerning the very articles of the Catholic faith of Christendom, or in any other things declared by Holy Scripture and the word of God necessary for your and their salvation ; but only to make an ordinance by policies, necessary and convenient to repress vice and for good conservation of this realm in peace, unity and tranquillity from ravin and spoil, insuing much the old, ancient customs of this realm in that behalf ; not minding to seek for any relief, succours, or remedies for any worldly things and human laws, in any cause of necessity, but within this realm at the hands of Your Highness, your heirs and successors, kings of this realm, which have and ought to have an imperial power and authority in the same, and not obliged in any worldly causes to any other superior."

This act provided that no license should be granted for anything against divine law.

Thus we see that marriage licenses, so far as England is concerned, were originally issued solely by the Pope of Rome, as head of the Catholic Church, until by the statute above cited it was provided that they should be issued by the Archbishop of Canterbury under the supremacy of the King. Later, when the Established Church of England was substituted in lieu of the Catholic Church as the religion of that country, and the sovereign became the head of the Church as well as of the State, the issue of such licenses was part of his prerogative, which, however, still flowed, and still flows through the same channel, namely, the Archbishop of Canterbury. In this country, there being no ecclesiastical establishment, the prerogative of the Crown to issue marriage licenses has always, before Confederation, been exercised by the Governor-General, the representative of the sovereign, and in this province since Confeder-

ation by the Lieutenant-Governor. There exist no statutes so far as this province is concerned limiting the exercise of this prerogative or restraining its effect, except the Code itself, which enacts certain nullities in marriage, and permits the exercise of prerogative only so far as to dispense from the publication of banns.

Under the English Marriage Act the issue of special licenses still remained vested in the Archbishop of Canterbury, though common licenses were to be issued by surrogates appointed for that purpose, but the common license could not license persons to be married in any other place than the parish church where one of the parties belonged, and within certain hours of the day : but the special license issued by the Archbishop of Canterbury could license persons to be married at any convenient time and place, and it was provided by the Marriage Act that mistakes of fact with regard to domicile of the parties should be absolutely covered by the license, although nullities resulting from the want of consent of parents would not be thereby covered.

It is not pretended that the license in question, being an exercise of the prerogative of the sovereign, could exempt from the execution of laws, so that all provisions of the code which involve nullity of marriage, or even those which make the marriage voidable in the discretion of the court, could not be rendered valid by the issue of a marriage license ; but I think that the license would be sufficient to cover any impediments which might arise from the allegiance which the parties to be married owed to a particular religious denomination to fulfil its rules and discipline, particularly, seeing the exercise of the Roman Catholic religion, as well as others, is subject to the supremacy of the Crown.

From the above citation we may at least safely conclude that the persons appointed by the Lieutenant-Governor for the issue of marriage licenses are not to enquire to what denomination of Christians the parties belong, nor whether the functionary to whom the license is addressed is in charge of the congregation to which the parties belong, since it is provided that these licenses are to be issued to all persons who apply for them, and furnish the necessary bond, and since it also appears from the latter part of Article 59A of the Civil Code that

the minister who has celebrated a marriage under the authority of such a license is not liable to any action of responsibility for damages, or otherwise, by reason of the existence of any legal impediment to the marriage, unless he knew of such impediment at the time of its celebration.

Also Article 1,207 of the Revised Statutes of Quebec provides : " In so far as regards the solemnization of marriage by Protestant ministers, no marriage license issued in any other manner or from any other authority shall be necessary."

These considerations only show that the license from the Lieutenant-Governor may take the place of banns without distinction of religion, but they would have no effect upon the question as to the validity of the solemnization itself, except such as might be derived from the inference that the Lieutenant-Governor would not grant a license which could have no legal effect and would result in facilitating concubinage ; and the further effect that such a license would cover any defect resulting from a purely ecclesiastical impediment.

There is this other consideration with regard to the application of persons who had previously professed the Catholic religion, for a license of marriage before a Protestant minister, viz : The validity of marriage is always presumed by a presumption of much more than ordinary strength which would easily prevail over any presumption which might exist that persons born and brought up in any particular branch of the Christian Church intended to continue therein ; especially in this country where religious profession is absolutely free. Thus in *O'Connor vs Kennedy*, 15 O. R. Q. B., p. 25, it was remarked : " This presumption," (the validity of marriage), " is not the same as the presumption raised with regard to other facts, but is much stronger. The evidence for the purpose of repelling it must be strong, distinct, satisfactory, and conclusive. A presumption of this sort in favor of marriage can only be negatived by disproving every reasonable possibility." These remarks in that case decided by the Queen's Bench in Ontario are fully justified by the following House of Lords and Privy Council cases : *Piers vs Piers*, 2 H. L. C., 331. *De Thoren vs Attorney-General*, 1 L. R. H. L., 686

P. C. Lastly, *Velaider Aronogary vs Sembecutty Valgalie*, 6 L. R. H. L. and P. C., p. 372. *Breakey vs Breakey*, 2 U. C. Q. B., p. 349. *Robb vs Robb*, 20 O. R. Q. B., p. 601. Thus if Catholic could not be married before a Protestant minister, their seeking marriage before such minister would be presumed to be a renunciation of the Catholic faith.

COMPETENT OFFICERS.

We continue then to analyse the articles of our Code, and would now refer to article 128: "Marriage must be solemnized openly by a competent officer recognized by law," and article 129: "All priests, rectors, ministers and other officers authorized by law to keep registers of acts of civil status, are competent to solemnize a marriage; but none of the officers thus authorized can be compelled to solemnize a marriage to which any impediment exists according to the doctrine and belief of his religion and the discipline of the Church to which he belongs."

The general language of articles 128 and 129 of the Civil Code, providing that marriages must be celebrated publicly and before a competent officer, and that all persons having authority to keep registers of civil status are competent officers, would certainly, if interpreted literally, give authority to any such officer to perform any marriage in a public manner, and that is admitted by the judgments of Mr. Justice Jetté and Mr. Justice Papineau, to which I have above referred; but it is said that this literal interpretation, as well of the word "publicly" as of the words "competent officer" must be restrained so as to mean publicly according to the usages of the different congregations, and "competent officer" must mean one competent to marry the particular persons presenting themselves, and in the case of Catholics, the proper cure of the parties: for, says Judge Jetté, the codifiers expressly say they did not intend to change the pre-existing law. Taking the pre-existing law (so far as Catholics are concerned) to be such as the learned judge has stated, namely, that Catholics can only be married after proclamation of banns in their own churches by their own proper cure in their own church, on pain of absolute nullity, the whole to be decided by ecclesiastical authority, the code has undoubtedly radically changed it.

Thus, article 63 of the Civil Code provides, "The marriage is solemnized at the place of the domicile of one or other of the parties: if solemnized elsewhere the person officiating is obliged to verify and ascertain the identity of the parties."

This is quite inconsistent with the idea that only the proper cure of the parties, and in their own church, could perform the marriage. The same conclusion results from the provision above cited as to the officer officiating at the marriage, requiring the production of a certificate of publication of banns, unless he himself has proclaimed them.

Thus, any person may clearly marry in any other place than that in which the banns have been proclaimed, but in that case a certificate of publication must be produced, and the functionary must identify the parties.

Again, it is provided that were the parties have come from some place out of Lower Canada, the officer celebrating the marriage must ascertain whether there be any impediments to the marriage. In this case the officer is obliged to celebrate the marriage of a person who comes from another country who is not or may not be a member of his Church at all, or belong to the particular religion which he professes. Only he must ascertain that there is no legal impediment.

Then, by article 129, the last clause provides that the minister of any church cannot be obliged to solemnize a marriage against which there exists any impediment according to the doctrines or discipline of his church. What would be the sense of this provision if the ministers could only marry their own parishioners in their own churches? But does not this provision clearly indicate that in the event of any impediment existing, according to the doctrines or discipline of any church preventing the marriage of any person in that church, that he may resort to another church where such impediment does not exist?

Then, by the old ordinances, marriages without such due formalities were absolutely void and produced no civil effect.

By the Code, article 156, it is provided, "Every marriage which has not been contracted openly, nor solemnized before a competent officer, may be contested by the

parties themselves, and by all those who have an existing and actual interest, saving the right of the court to decide according to the circumstances." This is the complete opposite of the old provision.

Mr. Girouard in the *Revue Critique* is at a loss to discover how the codifiers made this innovation. He observed that the authority of Pothier, which the codifiers cite under the article in question, declares for the absolute nullity of such marriages. That is true, but Laurent, Aubry et Rau, and Demlombe, who are also cited, justify the article in its present form.

Again, article 161 provides "When the parties are in the possession of the status, that is when they have lived together as man and wife publicly, and the certificate of their marriage is produced, they cannot demand the nullity of such act." This is also in absolute contradiction of the old law which declared that such marriages would produce no civil effect whatever.

Then again, there is the article which provides that where the parties are in good faith, though the marriage be null, the civil effects remain. This also is in absolute contradiction of the old law.

The truth is we have followed the Code of Napoleon in reference to marriage almost as closely as in other respects, only we have not confided the solemnization of marriage to a civil officer, but have left the formation of the civil contract to be enforced by considerations relating to religion. If we compare our code with the Code Napoleon on this subject, we find that we have adopted the earlier codification almost word for word, except with regard to *actes respectueux*, and to the place and manner of publication of banns and the persons who are appointed officers of civil status.

PUBLICITY.

Thus, our article 128, which requires the marriage to be celebrated publicly before a competent officer, is borrowed from article 165 of the Code of Napoleon, which provides: "The marriage shall be celebrated publicly before the civil officer of the domicile of one of the two parties." It is then natural to look for the interpretation of this word "publicly" to French jurisprudence

upon that article. See Sirey, Authorities, under article 165 where he sums up a large number of cases cited by him as follows: "Clandestinity or non-publicity of marriage does not result necessarily from the fact of the celebration out of the town hall." (See Laurent, No. 479.) Merlin Vo. Marriage, sec. 4, sub-sec. 1, 1 Proudhon, p. 220. 2 Duranton, No. 335.

It is to be noted that all these authorities are under a system which provides that marriages have to be celebrated publicly in the town hall of the domicile of one of the parties, and by the civil officer of that place; whereas our article provides only that the marriage has to be celebrated publicly before a competent officer recognized by law.

Laurent, at No. 477, makes the following remarks: "And what says article 115? 'The marriage shall be celebrated publicly.' It does not say in what shall consist the formalities which constitute publicity. The law establishes them in other articles. They are the publications, the celebration of the marriage by the civil officer at the town hall, the admission of the public to that function, the presence of four witnesses. All these formalities ought to be fulfilled. The law prescribes them in terms imperative and sometimes irritating. Is that to say that nullity must be pronounced as soon as one of these formalities has not been fulfilled? No. Here intervenes the discretionary power of article 193, afforded to the judge in such matters..... What is the reason of this difference between the vice of clandestinity and the other vices which annul marriage? Publicity is a complex fact, which is composed of different elements; one of these elements may be wanting and nevertheless it may be that the marriage had all possible publicity. There are, therefore, facts to be appreciated."

In the present case the defect alleged is not want of publicity, but incompetence of the officer who celebrated the marriage, and that incompetence is said to have resulted from the fact that although the officer was competent to celebrate a marriage between his own parishioners in the place where this marriage was actually celebrated, yet he was incompetent to celebrate a marriage between persons belonging to another denomination of Christians.

This limitation cannot be derived from the code, nor can it be presumed; for nullities, especially when they refer to the validity of marriage, are never presumed. It cannot be derived from the old law before the cession under which no one but a Catholic priest could marry anyone, Catholic or Protestant, because it is admitted that such a law, being antagonistic to the fundamental principles of our government, disappeared with the change of sovereignty. But it is said that it remains law for Catholics in virtue of the stipulations of the treaty of cession, as well as of the provisions of 14, Geo. III, cap. 83, guaranteeing to Roman Catholics the free exercise of their religion.

THE TREATY OF CESSION.

Is then the grant of free exercise of religion to be interpreted as conveying to the Roman Catholic Church a compulsory jurisdiction over their own members in a matter which we shall see concerns the civil authority?

In England, in 1688, dissenters from the Established Church, other than Roman Catholics, were granted the free exercise of their religion, and a century later, in 1791, after the treaty of which we are speaking, the same rights were granted in England to Roman Catholics; but in neither case was it pretended that this grant of religious toleration carried with it the right to govern their own marriages, but both Protestant dissenters and Roman Catholics in England, under Lord Hardwick's Act, could only legally marry in the Anglican churches.

The idea of special rights conveyed by the treaty as concerns Roman Catholic marriages may then be dismissed as purely imaginary.

I conclude this point by quoting the language of Mr. Portalis, counsellor of State, at the meeting of the legislative body of the 16th Ventose, year 11: "The civil and religious institutions were intimately united. Wise magistrates recognized that they might be separated. They had demanded that the civil status of the people should be independent of the religion that they professed. This change encountered great obstacles. Since then liberty of worship has been proclaimed, and it is now possible to secularise legislation. We have adopted this

great idea that we must permit all that Providence permits, and that the law which cannot force the religious opinions of the citizens should only see Frenchmen, as nature only sees men."

These remarks of Mr. Portalis are even more applicable to this country than to France, since here there is not a vestige of connection between the Church and the State, each being absolutely independent of the other, nor has the State any concern with the promotion of the interests of one denomination of christians rather than of another. What the State aims to secure is that the persons to be married shall not be within certain relationships ; nor persons incapable of giving consent ; nor persons already contracted in marriage ; nor, if they be minors, that the peace of families shall not be broken by marriage without the consent of their parents or guardians. These ends the law seeks to accomplish by providing that public proclamation of the intended marriage shall be made in the places where the parties are best known, and sufficient time beforehand to enable persons interested, to make opposition. But to this provision the law gives an alternative by receiving a guarantee from two responsible householders, who bind themselves in a sum of eight hundred dollars (\$800), on behalf of the proposed consorts that no impediment to marriage exists between them. Then the law requires publicity in the marriage ceremony itself, to provide that no constraint shall be put upon the consent of either party thereto ; and finally it required there shall exist sure and certain proof of the fact of the celebration, which it secures by means of authentic registers, which it ordains to be kept by its officers. It requires no religious ceremony of any description. None of its provisions have any reference to the particular denomination to which the parties belong.

MARRIAGE A NATURAL LAW.

Marriage is of natural as well as positive law. Man was created male and female, and given the command to be fruitful and multiply and replenish the earth, and it therefore belongs to human beings, whether Christians or non-Christians. It may then surely be assumed that

the law was intended to be wide enough to provide for every case.

Now, let us see how the doctrine of personal jurisdiction of each denomination over its own people would be affected by that consideration. I suppose no argument could be brought forward which would deny the right of an Anglican minister to marry two Roman Catholics, which would not apply with equal force the positions being reversed. It would also apply to the different Protestant denominations as between themselves; so that in no case could any minister marry persons not belonging to his own religious organization. How then could non-Christians be married at all? How could even two persons belonging to different Christian organizations be married? Without some relaxation of the principle invoked by plaintiff, they could not be married.

The Archbishop, in his pastoral letter, already cited, admits that a Protestant minister may validly marry a Protestant and a Catholic, but there can be found no law to justify that admission, consistent with the existence of the ordinances above referred to, which prohibit any marriage except by a Catholic priest in a Catholic church. The Archbishop's position is based upon the decrees of the Council of Trent, as modified subsequently by pontifical authority, and although he may feel himself bound by these, it is needless to say that our civil law does not flow from these sources.

I conclude then, that the State, having laid aside every attempt to interfere with the religion of the people, and having left them entirely free to worship as they please, or not to worship at all, there is no reason to restrain the general language of the code so as to give an obligatory jurisdiction in relation to marriage founded upon considerations of the particular denomination of Christians to which the parties belong.

This view is also strengthened by a combination of the concluding clauses of Articles 127 and 129, of the Civil Code, the former providing that impediments existing according to the rules of the several churches are recognized, and the latter, that the minister of any church cannot be compelled to solemnize a marriage to which there exists an impediment according to the religious belief of such church. This clause assumes that an

officer of civil status would be forced by *mandamus* to solemnize a marriage where no impediment existed, and it surely implies that where no legal hindrance exists, such persons could be legally married by some other officer. Thus, by catholic doctrine the marriage tie is indissoluble; but under our law Parliament can, and does grant divorces, and the parties are at liberty, without any offence against the law, to remarry. Supposing them to be Catholics, a Catholic priest could not be compelled to solemnize a marriage between either of them with a third person. Yet surely they could validly contract marriage, else the sovereign power of Parliament declaring them free would be set at naught. Yet it would have to be by a Protestant minister, and what reason is there to confide a particular marriage to one officer rather than to another, provided public interests are guarded? Because marriage is a sacrament? If it is, it is one which does not depend upon the office of the priest, but results wholly from the nature of the contract between the parties. It was equally a sacrament before the Council of Trent. It is equally a sacrament in the case of Catholics married to-day in France or Belgium before the civil magistrate. I can see no reason, having any legal weight, to admit the limitation which the plaintiff claims.

WHY LICENSES ARE SPECIAL.

If the question be asked why, by the license law, licenses are to be directed to Protestant ministers only, the answer is evident, namely, with regard to marriage solemnized in Roman Catholic churches the right of the Roman Catholic authorities to grant dispensations and obtain the fees thereon is reserved by law. Both licenses and dispensations, more especially concerning the publication of banns, are revenue measures.

I hold then that a marriage upon a license by a Protestant minister of two Catholics, is not illegal as having been performed by an incompetent functionary.

THE MARRIAGE VOID.

I do not call attention to the circumstance that marriages by incompetent functionaries are not by the terms

article 156 of the Civil Code void, but only voidable in the discretion of the court, and that the declaration sets up no circumstance of want of publicity or clandestinity to guide that discretion.

Nor do I call attention to the fact that where a certificate of marriage is presented, and the parties are in possession of the status of man and wife, that neither can contest the validity of such certificate under the terms of article 161 of the Civil Code.

I do not mention either, the point that, although I am asked to declare the marriage in this case without civil effect, there is no allegation of bad faith on the part of the consorts, notwithstanding the terms of article 163, which enacts that even where a marriage is invalid, the good faith of the parties shall preserve its civil effects.

These matters have not been submitted to me. But they indicate how profoundly our legislation on the subject has been influenced by the Code Napoleon, which, in all these respects, is almost textually followed.

THE ECCLESIASTICAL DECREE

I come now to consider the value of the ecclesiastical decree dissolving the marriage tie, which I am asked to confirm. I shall not require to dwell long on this subject. Many of the remarks already made bear upon it, and need not be repeated. Had it not been for the fact that the jurisdiction of the ecclesiastical authority to dissolve the marriage tie has been sustained by the judgments of eminent men and text writers already referred to, I should have considered it elementary that such an assumption of ecclesiastical authority was a grave attack upon our system of free and responsible government, under which every elector has his voice in the making and execution of the laws.

The Archbishop in his pastoral letter, says that marriage is not a civil act: it is purely religious. If there is a contract in it, it is one with the sacrament, and not distinct from it; and thus it concerns entirely religion, and not the law. Consequently the Church only has the right to make as well as to administer laws relating to the confirmation of the marriage tie. It was necessary to go that far to maintain the jurisdiction assumed in this mat-

ter. If marriage is to be governed by the sovereign authority flowing through Parliament, it must be administered by the sovereign authority exercised by the constituted courts. That marriage is a civil contract, no lawyer denies. To sustain the position of the Archbishop you must set aside the unanimous jurisprudence of France, you must ignore the laws of England, you must forget the British North America Act, which assigns marriage and divorce to the federal Parliament, and you must abolish the code of our own province, which makes provisions covering the whole ground and assigns the administration of them to the courts.

Pothier, who is our leading authority as to the French law, (6 Pothier-Bugnet, p. 6) says: (translated): "The marriage that the faithful contract, being a contract with Jesus Christ has elevated to the dignity of a sacrament, it is at the same time both civil contract and sacrament. The marriage being a contract belongs, like all other contracts, to the political order; and it is, in consequence, like all other contracts, subject to the laws of the secular power that God has established to govern all that belongs to the government and good order of civil society... Secular princes have then the right to make laws for marriages for their subjects, as well to forbid them to certain persons, or to regulate the formalities which they think necessary to make for the validity of the contract."

He then observes: "That marriages contracted in violation of these laws, when they import nullity are absolutely null and void." And adds: "There is not, moreover, in this case, a sacrament of marriage; for there cannot be a sacrament without the thing which is the matter of the sacrament. The civil contract being the matter of the sacrament of marriage, there cannot be a sacrament of marriage when the civil contract is null."

Pothier then proceeds to point out that the secular power had been always acknowledged, and even taught, in France, by doctors of the Church. It is unnecessary to enlarge upon this point. It is admitted that this was the French doctrine, even by those jurists who held that marriage, as distinguished from the civil rights which flows from it, belongs exclusively to the Church. See the able work of the late Mr. Justice Loranger, on Marriage, Vol. 2, pages 1, 2 and 3.

Such was also certainly the doctrine in England at the time of the cession as well as now. The fact that causes relating to marriage were appointed to be tried by ecclesiastical courts both in England and France does not in any way affect the question, because these courts in these countries which had an established religion, exercised a portion of the sovereign authority. The same principle prevailed here under the French regime, and we find the Superior Council prohibiting the Church from proceeding to perform a marriage between minors without consent of parents, upon an ecclesiastical dispensation. (2 Edits & Ordon., p. 311.)

Surely it is enough to say that our code leaves no doubt as to what authority governs laws relating to marriage. It seems trite to remark that justice, or, in other words, the administrative determination and execution of civil rights, flows only from the sovereign. The claim of jurisdiction which is put forward, must rest, I suppose, on the supposition that the right of the ecclesiastical court to hear matrimonial causes, which existed as an institution under the French regime, has in some way or another survived the change of sovereignty. There can be no ground for such opinion. Though colonists carry with them the laws of their country, they do not carry its courts. Though the laws of a ceded territory may remain under the new sovereignty, neither courts nor officials remain, and the laws can only be put in execution in so far as courts shall be created having jurisdiction.

This does not need argument. It is a necessary consequence of the maxim that honor and justice flow from the sovereign. So much is this the case that it is only by statutory provision that offices do not become vacant on the demise of the crown, but are only suspended until proper oaths have been taken.

Then whence the power in the Catholic Church, or any other, to summon parties, and solemnly decide as to the validity of the marriage tie between them? No such grant of power has ever been made since the cession.

An expression of their lordships in the Guibord case has been cited, purporting that a bishop is *pub. ordinaris*, having power to decide upon matters of faith

and doctrine, and doubtless this is the case. His authority is founded upon the implied contract that the members of the Church agree to submit to the rules of the Church, and to the mode of their execution so long as they remain members, on pain of ecclesiastical penalties, or even excommunication, and in such matters the civil courts will not interfere; but it will interfere, and will give a remedy where the ecclesiastical authority imposes even an ecclesiastical penalty, such as refusal of burial, without warrant, under the rules and laws of the Church. Thus, in the *Guibord* case, the court maintained the mandamus ordering the interment of his body in consecrated ground.

STATUS OF CHURCHES

The truth is all the churches in this country are mere voluntary associations, and they deal with their members by virtue of contract, either expressed or implied. In this they are not different from other voluntary associations. Persons, when they become members, bind themselves to abide by the laws of the association, and they recognize the authority of the officers as provided by the laws. But there is no kind of coercive jurisdiction existing in any of them.

The case of *Long vs. the Bishop of Cape Town*, reported in 1 Moore, Privy Council, N. S., 411, concerned the Church of England in South Africa, whose bishops are appointed by letters patent from the Crown. In that case, the point at issue concerned a sentence of deprivation which the Bishop of Cape Town had pronounced against Mr. Long, one of his clergy, for disobedience. It was held that the letters patent under which the bishop acted having been issued after constitutional government had been established in the Cape of Good Hope, were ineffectual to create any jurisdiction, ecclesiastical or civil within the colony. In giving judgment, the court said: "The Church of England in places where there is no church established by law is in the same situation with any other religious body—in no better, or no worse position; and the members may adopt, as members of any other communion may adopt, rules for enforcing discipline within their

body which will be binding on those who expressly or by implication have assented to them."

Again, in another case of the Lord Bishop of Natal, 3 Moore, Privy Council, N. S., 115, which was a prosecution for heresy, the court used the following language, "The United Church of England and Ireland is not a part of the constitution in any colonial settlement, nor can its authorities nor those who bear office in it claim to be recognized by the law of the colony, otherwise than as members of a voluntary association. The Bishop of Natal afterwards sued the trustees of the colonial bishoprics fund for arrears of his salary. This case came before Lord Romelly in 1866 (see L. R., 3 Eq., p. 1). His Lordship held that the law as declared by the Judicial Committee left all the Episcopal functions exactly as by the law of the Church of England they belonged to his office, were he bishop of an English diocese; with this exception that he cannot enforce the execution of these orders without having recourse to the civil tribunals for the purpose.

The following is extracted from an opinion given by Sir John Coleridge, Sir Roundell Palmer, and Doctor Deane in April, 1869, and may be found in Forsyth's Constitutional Law p. 60: "The Crown is supreme over all causes ecclesiastical in the same and in no other sense, and to no greater extent than the Crown is supreme over causes temporal—that is by law, and by means of the various established courts of law."

Needless to say that no ecclesiastical court in the Roman Catholic communion has ever been constituted in this country under the supremacy of the Crown, and it may be doubted whether such a court would be accepted by that communion. That it does not exist may be readily judged from the documents of record in this cause, which show that the decree annulling the marriage laws taken, not by either of the parties, but officially, to appeal, before the Pope, and by him confirmed.

But surely there is no need of this argument. Article 156 of the Civil Code says that such informalities as are alleged in this cause are not to cause nullity, but the court has to judge of their gravity.

The ecclesiastical authority has proceeded upon some other alleged law, which imports nullity.

The decree in question is not only invalid for want of jurisdiction, but is in violation of said article 156, and is of no legal force or effect.

The demurrer is maintained on both grounds, and the plaintiff's action is dismissed with costs.

INDEX

	PAGE
An essay on marriage.....	3
APPENDIX :	
No. 1. Testimony of Edouard Delpit.....	31
No. 2. " of Edouard Delpit.....	34
No. 3. " of Mrs. Edouard Delpit.....	38
No. 4. " of Norbert Fafard	43
No. 5. " of Allan Bernard Côté	48
No. 6. " of Marie Erilda Derome.....	52
No. 7. " of Rev. Claude Perrin.....	53
No. 8. " of Emilia Campbell.....	56
No. 9. " of Jeanne Marie Berthe Aurore Côté.	64
No. 10. " of Rev. Léopold Massicotte.....	73
No. 11. " of Malvina Lemire-Marchand.....	75
No. 12. " of Margaret Campbell.....	78
No. 13. " of Mrs. Gabriel Moise Caron.....	84
Petition of Mr. Delpit	88
Answer to the Petition of Mr. Delpit.....	89
Ecclesiastical Sentence.....	90
Certificate of Liberty	93
Plaintiff's Declaration.....	94
Defendant's Plea and Demurrer.....	96
Judgment of Hon. Justice Archibald.....	101

